The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

Department of Environmental Quality Engineering

Division of Hazardous Waste

HAZARDOUS WASTE REGULATIONS FOR MASSACHUSETTS

PUBLIC HEARING DRAFT

AMENDMENTS AND ADDITIONS TO REGULATIONS

SUMMER 1987

(VOLUME II)(pt.2-3)

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While supplies last, a copy of this public hearing draft may be obtained by calling or writing:

Compliance Branch
Division of Hazardous Waste
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The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental Quality Engineering
One Winter Street, Boston 02108

S. RUSSELL SYLVA
Commissioner

Dear Citizen:

I am pleased to send you these copies of Public Hearing Drafts dealing with amendments and additions to the Massachusetts comprehensive hazardous waste regulations. These regulatory amendments have been developed with the goals of further strengthening, clarifying and extending the hazardous waste management regulations in order to better protect the public health, safety and welfare and the environment, and to ensure that Massachusetts maintains its authority to administer its hazardous waste program in lieu of the federal program.

The process of developing and further refining the Department's regulations is ongoing. The Department continues to benefit from the cooperation of industry, environmental groups and other concerned citizens in addressing these complex issues.

After reviewing these Public Hearing Drafts, I hope that you will comment on them and that you will attend one of the public hearings to be held by the Department in July. Your comments will be carefully considered as we continue to develop and amend the Department's regulations so that they will contribute to improving the public health, safety and welfare, and the environment, in such a way as to maintain the economic well-being of the Commonwealth.

Very truly yours,

for S. Russell Sylva
Commissioner

SRS/JM/jp

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Note: Part 1: Hazardous Waste Generator regualtions is printed in a separate public hearing draft document.

NOTICE

Notice is hereby given that the Department of Environmental Quality Engineering will hold six (6) public hearings at the times and places set forth below.

These hearings will provide opportunity for the public to comment on three sets of proposed regulations and one set of emergency regulations promulgated by DEQE and filed with the Secretary of the Commonwealth on or about June 23, 1987.

One set of proposed regulations would amend DEQE's hazardous waste regulations, 310 CMR 30.000, to set more detailed standards for the handling of hazardous waste and regulated recyclable material at the site of generation, and for the handling of such waste and material after it leaves the site of generation. These regulations would require small quantity generators to meet standards governing design and maintenance of accumulation areas. These regulations would require generators to meet more stringent requirements governing preparation for emergencies and keeping records. These regulations would be at least as stringent as new, more stringent Federal regulations on various aspects of this subject. These regulations would create two new categories of generators, the very small quantity generator and the Class A generator, both subject to different regulations than at present. DEQE has statutory authority to adopt these regulations pursuant to G. L. c. 21C, §§4 and 6; and G. L. c. 21E, §6.

Another set of proposed regulations would amend DEQE's air pollution regulations, 310 CMR 7.00, and hazardous waste regulations, 310 CMR 30.000, by moving from the latter to the former requirements governing incineration of polyhalogenated aromatic hydrocarbons, and making conforming amendments. DEQE has statutory authority to adopt these regulations pursuant to G. L. c. 21C, §§4 and 6; G. L. c. 21E, §6; and G. L. c. 111, §§142B and 142D.

The emergency regulations amend those provisions of DEQE's hazardous waste facility financial responsibility regulations, 310 CMR 30.900, that implement legislation (G. L. c. 21C, §§15 et. seq.) establishing the Hazardous Waste Insolvency Fund. Said Insolvency Fund was intended to cover claims for accidents occurring during 1986, with a June 30, 1987 deadline for filing claims with respect to such accidents. DEQE's current regulations on this subject were scheduled to expire on June 30, 1987. The Legislature recently extended the life of the Insolvency Fund to cover claims for accidents occurring during 1987, with a June 30, 1988 deadline for filing claims with respect to such accidents. DEQE's regulations on this subject must also be extended. DEQE is also changing these regulations in one respect. Currently, the regulations say that DEQE receives all claims against a financial responsibility mechanism established in compliance with the regulations. The emergency regulations require those establishing a financial responsibility mechanism to obtain and maintain the services of a "Claims Administrator", who will be responsible for receiving and administering all claims against the financial responsibility mechanism. Facilities in compliance with the current regulations will be required to comply with this new requirement by September 15, 1987. DEQE has statutory authority

to adopt these regulations pursuant to G. L. c. 21C, §§4 and 6; G. L. c. 21E, §6; and Stat. 1986 c. 10, §3.

The last set of proposed regulations would amend DEQE's regulations - 310 CMR 3.00 - governing access to, and confidentiality of, DEQE's records and files. These regulations would prescribe more stringent requirements and procedures for making confidentiality requests. These regulations would also specify who would have access to confidential materials in DEQE's files. DEQE has statutory authority to adopt these regulations pursuant to G. L. c. 21A, §2(28); G. L. c. 21, §27(12); G. L. c. 21C, §§4 and 6; G. L. c. 21E, §§3(c) and 6; and G. L. c. 111, §§142B and 142D.

Copies of the proposed regulations are available for inspection at each Regional Planning Agency and each of DEQE's regional offices. Copies may be obtained, free of charge, from the Division of Hazardous Waste, DEQE, One Winter Street, 5th Floor, Boston, MA 02108.

The public hearings will be held as follows:

July 14, 1987	July 16, 1987	July 17, 1987
2:00 P.M. PITTSFIELD City Hall 66 Allen Street City Council Chamber	9:30 A.M. LOWELL University of Lowell Lydon Library North Campus	1:00 P.M. BARNSTABLE Cape Cod Comm. College Lecture Hall A
July 14, 1987	**July 16, 1987**	**July 20, 1987**
7:00 P.M. HOLYOKE Holyoke Comm. College Frost 271 B Building	2:30 P.M. WORCESTER Worcester Publ. Library Saxe Room	9:30 A.M. BOSTON One Ashburton Place 21st Floor

Testimony and comments may be presented orally and/or in writing at the public hearings. Testimony may be presented in writing no later than August 7, 1987. Written comments shall be addressed to: Douglas Wallace, Division of Hazardous Waste, DEQE, One Winter Street, 5th Floor, Boston, MA 02108

By Order of the Department

Thomas C. McMahon, Director
Division of Water Pollution Control

S. Russell Sylva, Commissioner

GENERAL INTRODUCTION

These public hearing drafts are regulatory amendments to the Massachusetts Hazardous Waste Regulations. They are sufficiently diverse and extensive that it is convenient to divide them into three parts, as described below. This public hearing draft contains the second and third of the three parts. The first part is printed in a separate public hearing draft. This may be requested from the Division of Hazardous Waste in DEQE at (617) 292-5898.

The first part consists of proposed amendments to the regulatory requirements for generators hazardous waste and regulated recyclable material. These proposed changes primarily impact on generators of less than 1000 kilograms of hazardous waste a month (approximately 250 gallons), which are called Small Quantity Generators. Some of these proposed changes are necessary to conform to recent increased federal requirements in emergency preparedness and record keeping for Small Quantity Generators of hazardous waste. The Massachusetts hazardous waste regulations are required to be at least as stringent as the federal requirements. The proposed changes also increase the standards for the accumulation (storage) of hazardous waste for large and small generators and will provide transport and disposal options for a new class of generator, the very small quantity generator (those generating under 100 kilograms month of hazardous waste). In addition, the proposed amendments would create a new class of generator, called the Class A generator, for those who generate only Class A regulated recyclable material and no other hazardous waste.

Attached to the end of the first part, is a technical change moving a prevention of air pollution requirement, governing the incineration of hazardous waste, from the hazardous waste regulations to the air pollution regulations.

The second part, enclosed here, consists of amendments to existing regulations that provide alternative means to satisfy the requirements for financial responsibility in the case of pollution liability, and is a response to the unavailability of the pollution liability insurance called for in the regulations. These amendments would extend the current Department's regulations implementing the Insolvency Fund to December 31, 1987 (claims may be filed through June 1988). They would also require hazardous waste facilities relying on the Fund to obtain and maintain a "Claims Administrator", and therefore remove the Department from the claim administration process. Since the Department's previous regulations on this expire June 30, 1987 these amendments are being adopted as emergency regulations.

The third part, enclosed here, proposes amendments to regulations governing access to and confidentiality of the Department's records and files. These changes include specifying in greater detail the requirements and process in gaining access to records and files and also expands the list of persons to whom the Department would give access to confidential information.

For each of the parts described above, the text of the proposed changes is preceded by a discussion of the background and context of the regulatory amendments.

NOTE: To discuss the proposed amendments, you may call:

Douglas Wallace
Division of Hazardous Waste, DEQE
(617) 292-5582

310 CMR: DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING

AMENDMENTS TO 310 CMR 30.900 HAZARDOUS WASTE FACILITY FINANCIAL RESPONSIBILITY REGULATIONS IMPLEMENTING THE HAZARDOUS WASTE FACILITY INSOLVENCY FUND

The Department is amending 310 CMR 30.900 to extend the regulations it adopted to implement the legislation (G. L. c. 21C, §§14 et. seq.) creating the Hazardous Waste Facilities Insolvency Fund [the "Insolvency Fund"], and to make one change in those regulations.

The Insolvency Fund was created by the Legislature in March 1986, effective retroactively to January 1986. At that time, a majority of hazardous waste facilities were unable to obtain, at any price, the required liability insurance for bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from operation of the facilities. The Insolvency Fund assures that those who suffer injuries or damage will be compensated, regardless of the financial condition of the facility whose operation caused the injuries or damage.

The Insolvency Fund was initially created as a temporary, one-year solution to the pollution liability insurance crisis. The regulations adopted by the Department to implement the Insolvency Fund were also temporary. In late December 1986, the Legislature extended the life of the Insolvency Fund to December 31, 1987 (claims may be filed through June 30, 1988). The Department must now extend the life of its regulations to conform to this action of the Legislature.

The Department is making one change in these regulations. The present regulations on this subject provide that anyone having a claim against a facility must notify the Department if they wish to obtain payment from the financial responsibility mechanisms established in compliance with the regulations. The Department then takes a specified, limited role in the payment process. The Department does not want, and does not believe it should have, such a role. Therefore, these regulations require each facility relying on the Insolvency Fund to obtain and maintain the services of a "Claims Administrator", a qualified person who will be responsible for the processing and administration of all requests to make payments from a facility's financial responsibility mechanism if and when there is a third party claim resulting from an accident.

1. 310 CMR 30.901(6) is hereby amended by striking out division (c) and inserting in place thereof the following:-

(c) The owner or operator of each facility in existence on July 1, 1987 shall, by no later than September 15, 1987, provide to the Department evidence of a financial mechanism meeting all requirements of 310 CMR 30.908, as in effect on July 1, 1987. From July 1 through September 15, 1987, the owner or operator of each facility in existence on July 1, 1987 shall have, and maintain in effect, evidence of a financial mechanism meeting all requirements of 310 CMR 30.908, as in effect on June 30, 1987. After September 15, 1987, no facility in existence on July 1, 1987 shall commence or continue operating unless the owner or operator has provided to the Department evidence of a financial mechanism meeting all requirements of 310 CMR 30.908, as in effect on July 1, 1987, and said financial mechanism is in effect. After July 1, 1987, no facility not in existence on July 1, 1987 shall commence or continue operating unless the owner or operator has provided to the Department evidence of a financial mechanism meeting all requirements of 310 CMR 30.908, as in effect on July 1, 1987, and said financial mechanism is in effect. If an owner or operator is required by 310 CMR 30.908 to obtain and maintain in effect a contract with a Claims Administrator, the requirements and deadlines set forth in 310 CMR 30.906(1)(c) shall apply to said contract.
(d) On and after July 1, 1988, no facility shall commence or continue operating unless the owner or operator has provided to the Department evidence of a financial mechanism meeting all requirements of 310 CMR 30.908, as in effect on July 1, 1988, and said financial mechanism is in effect.

2. Effective July 1, 1987 through June 30, 1988, 310 CMR 30.908 is hereby amended by striking out said section and inserting in place thereof the following section:-

30.908: Liability Requirements

(1) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities in Massachusetts, shall demonstrate assurance of financial responsibility for bodily injury and property damage to third parties caused by each sudden accidental occurrence arising from operation of the facility(ies). The owner or operator of each facility shall have and continuously

maintain such coverage using either the options specified in 310 CMR 30.908(1)(a) through (d) or the options specified in 310 CMR 30.910. The options specified in 310 CMR 30.908(1)(a) through (d) may be used by the owner or operator of a facility, or a group of such facilities in Massachusetts, provided that the use of such options shall be subject to the provisions of 310 CMR 30.908(5), (6), and (7). The options specified in 310 CMR 30.910 may be used by the owner or operator of each facility, provided that the use of such options shall be subject to the provisions of 310 CMR 30.910. If the owner or operator of a facility, or a group of such facilities in Massachusetts, uses the options specified in 310 CMR 30.908(1)(a) through (d), said owner or operator, subject to the provisions of 310 CMR 30.908(3), (4), and (5), shall have and continuously maintain coverage for sudden accidental occurrences in the amount of at least $3-million per each sudden accidental occurrence with an annual aggregate of at least $6-million, exclusive of legal defense costs. If the owner or operator of a facility uses the options specified in 310 CMR 30.910, said owner or operator shall have and continuously maintain coverage for sudden accidental occurrences in the amount set forth in 310 CMR 30.910. Unless such assurance of financial responsibility is demonstrated entirely by liability insurance in compliance with 310 CMR 30.908(1)(a), the owner or operator shall also obtain and maintain in effect a contract with a Claims Administrator in compliance with 310 CMR 30.908(1)(e). As used in 310 CMR 30.908(1), the term "Claims Administrator" shall mean a person who shall be responsible for the processing and administration of all requests to make payments from a trust fund, standby trust fund, surety bond, or letter of credit pursuant to 310 CMR 30.908(1). The owner or operator of each facility shall give notice to both the Department and the Claims Administrator of every claim for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility(ies). The owner or operator of each facility shall give such notice to both the Department and the Claims Administrator as soon as possible and in any event no later than thirty (30) days after learning of such claim. The owner or operator of each facility shall give notice to both the Department and the Claims Administrator of every judgment against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility. The owner or operator of each facility shall give such notice to both the Department and the Claims Administrator as soon as possible and in any event no later than thirty (30) days after learning of said judgment. The owner or operator of each facility shall submit to the Department a copy of every judgment against the owner or operator for bodily injury and/or property damage caused by

a sudden accidental occurrence or occurrences arising from the operation of the facility. The owner or operator of each facility shall submit a copy of such judgment to the Department as soon as possible and in any event no later than thirty (30) days after receiving a copy thereof.

(a) An owner or operator may demonstrate the required coverage by having liability insurance, as specified in 310 CMR 30.901(2) or (6), which conforms to 310 CMR 30.908(1)(a).

1. Each liability insurance policy shall include a Hazardous Waste Facility Liability Endorsement (the "endorsement") and may be evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in 310 CMR 30.909(6). The wording of the certificate of insurance shall be identical to the wording specified in 310 CMR 30.909(7). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of liability insurance to the Department. If requested by the Department, the owner or operator shall provide a signed duplicate original of the liability insurance policy. An owner or operator of a facility shall submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Department within the applicable period prescribed in 310 CMR 30.901(2) or (6).

2. At a minimum, the insurer shall be licensed to transact the business of insurance in Massachusetts, or authorized to provide insurance as an excess or surplus lines insurer in Massachusetts, or a risk retention group lawfully providing insurance to its members in Massachusetts.

(b) An owner or operator may demonstrate the required coverage by establishing a sudden accidental occurrence liability trust fund, as specified in 310 CMR 30.901(2) or (6), which conforms to 310 CMR 30.908(1)(b), and by sending an originally signed duplicate of the trust agreement to the Department within the applicable time period prescribed in 310 CMR 30.901(2) or (6).

1. The trustee shall be a bank or other financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by the Massachusetts Commissioner of Banking, or the trustee shall be a national bank.

2. The wording of the trust agreement shall be identical to the wording specified in 310 CMR 30.909(8)(a), and the trust agreement shall be

accompanied by a formal certification of acknowledgement identical to the wording specified in 310 CMR 30.909(8)(b).

3. On the date of the initial establishment of the sudden accidental occurrence liability trust fund, the value of the fund shall be at least six million dollars ($6,000,000), or such other amount as required by the Department pursuant to 310 CMR 30.908(4) or (5).

4. If an owner or operator substitutes other financial assurance as specified in 310 CMR 30.908(1) for all or part of the sudden accidental occurrence liability trust fund, he may submit a written request to the Department for release of the amount in excess of the amount to be covered by the sudden accidental occurrence liability trust fund.

5. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the sudden accidental occurrence liability trust fund in satisfaction of the judgment by submitting to the Claims Administrator a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.

6. After receiving the material described in 310 CMR 30.908(1)(b)5, the Claims Administrator shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Claims Administrator shall instruct the trustee to pay to the person who obtained the judgment such amounts, not to exceed the amount of the judgment or the amount of the limits set forth in 310 CMR 30.908(1), whichever amount is less, as the Claims Administrator may specify in writing.

7. No trust shall be terminated without prior written consent of the Department. The Department may agree to termination of the trust when the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(1), or when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(c) An owner or operator may demonstrate the required coverage by obtaining a surety bond which conforms to 310 CMR 30.908(1)(c) and by submitting the surety bond to the Department within the applicable time period prescribed in 310 CMR 30.901(2) or (6).

1. The surety company(ies) issuing the bond shall, at a minimum, be among those lawfully selling surety bonds in Massachusetts.

2. The wording of the surety bond shall be identical to the wording specified in 310 CMR 30.909(9).

3. An owner or operator who uses a surety bond to satisfy the requirements of 310 CMR 30.908 shall also establish a standby trust fund. Under the terms of the surety bond, all payments made thereunder shall, in accordance with instructions from the Department, either be paid by the surety directly to a person described in 310 CMR 30.908(1)(c)5 or deposited by the surety directly into the standby trust fund. This standby trust fund shall meet the requirements in 310 CMR 30.908(1)(b), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Department with the surety bond; and

b. Until the standby trust fund is funded pursuant to the requirements of 310 CMR 30.908, the following are not required: (i) payment into the trust fund as specified in 310 CMR 30.908(1)(b); (ii) annual valuations as required by the trust agreement [See 310 CMR 30.909(8)(a)(Section 10)]; and (iii) notices of nonpayment as required by the trust agreement [see 310 CMR 30.909(8)(a)(Section 15)].

4. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the surety bond in satisfaction of the judgment by submitting to the Claims Administrator a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by

the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.

5. After receiving the material described in 310 CMR 30.908(1)(c)4, the Claims Administrator shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Claims Administrator shall instruct the surety company(ies) issuing the bond to pay either to the person making the claim or into the standby trust fund, or the Claims Administrator shall instruct the trustee of the standby trust fund to pay to the person who obtained the judgment, such amounts, not to exceed the amount of the judgment or the amount of the limits set forth in 310 CMR 30.908(1), whichever amount is less, as the Claims Administrator may specify in writing.

6. The bond shall guarantee that the owner or operator shall:

a. Fund the standby trust fund in an amount equal to either the sum of the judgment described in 310 CMR 30.908(1)(c)5 and the costs of administering said fund, or the amount of the penal sum, whichever is less, within fifteen (15) days after the Department or a court of competent jurisdiction issues an order to that effect; or

b. Provide alternate financial assurance as specified in 310 CMR 30.908, and obtain the Department's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and by the Department of a notice of cancellation of the surety bond from the surety.

7. Under the terms of the bond [see 310 CMR 30.909(9)], the surety shall become liable on the bond obligation when the owner or operator does not perform as guaranteed by the bond [see 310 CMR 30.909(9)].

8. The penal sum of the bond shall be at least six million dollars ($6,000,000), or such other amount as

required by the Department pursuant to 310 CMR 30.908(4) or (5).

9. Under the terms of the bond, the surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator, to the Claims Administrator, and to the Department. Cancellation may not take effect, however, until at least one hundred twenty (120) days after the date of receipt of the notice of cancellation by the owner or operator, by the Claims Administrator, and by the Department, as shown by the latest return receipt.

10. No bond shall be cancelled without prior written consent of the Department. The Department may agree to cancellation of the bond when the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(1), or when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(d) An owner or operator may demonstrate the required coverage by obtaining an irrevocable letter of credit which conforms to 310 CMR 30.908(1)(d) and by submitting the letter to the Department within the applicable time period prescribed in 310 CMR 30.901(2) or (6).

1. The institution issuing the letter of credit shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Massachusetts Commissioner of Banking, or the institution shall be a national bank.

2. The wording of the letter of credit shall be identical to the wording specified in 310 CMR 30.909(10).

3. An owner or operator who uses a letter of credit to satisfy the requirements of 310 CMR 30.908(1) shall also establish a standby trust fund. Under the terms of the letter of credit, all payments made thereunder shall, in accordance with instructions from the Claims Administrator or the Department, either be paid by the issuing institution directly to a person described in 310 CMR 30.908(1)(d)8 or deposited by the issuing institution directly into the standby trust fund. This standby trust fund shall meet the requirements in 310 CMR 30.908(1)(b), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Department with the letter of credit; and

b. Until the standby trust fund is funded pursuant to the requirements of 310 CMR 30.908, the

following are not required: (i) payment into the trust fund as specified in 310 CMR 30.908(1)(b); (ii) annual valuations as required by the trust agreement [See 310 CMR 30.909(8)(a)(Section 10)]; and (iii) notices of nonpayment as required by the trust agreement [see 310 CMR 30.909(8)(a)(Section 15)].

4. The letter of credit shall be accompanied by a letter from the owner or operator which shall state:
   a. The letter of credit number;
   b. The name of the issuing institution;
   c. The date of issuance of the letter of credit;
   d. The EPA identification number(s) of the facility(ies);
   e. The name(s) and address(es) of the facility(ies); and
   f. The amount of funds assured by the letter of credit.

5. The letter of credit shall be irrevocable and shall be issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless, no later than one hundred and twenty (120) days before the current expiration date pursuant to the terms of the letter of credit, the issuing institution notifies the owner or operator, the Claims Administrator, and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred and twenty (120) days shall not begin before the date when the owner or operator, the Claims Administrator, and the Department have received the notice, as shown by the latest return receipt.

6. The letter of credit shall be issued in an amount at least six million dollars ($6,000,000), or such other amount as required by the Department pursuant to 310 CMR 30.908(4) or (5).

7. If an owner or operator substitutes other financial assurance as specified in 310 CMR 30.908(1) for all or part of the amount of the letter of credit, he may submit a written request to the Department for release of the amount in excess of the amount to be covered by the letter of credit.

8. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the letter of credit in

satisfaction of the judgment by submitting to the Claims Administrator a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.

9. After receiving the material described in 310 CMR 30.908(1)(d)8, the Claims Administrator shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Claims Administrator shall instruct the institution issuing the letter of credit to pay either to the person making the claim or into the standby trust fund, or the Claims Administrator shall instruct the trustee of the standby trust fund to pay to the person who obtained the judgment, such amounts, not to exceed the amount of the judgment or the amount of the limits set forth in 310 CMR 30.908(1), whichever amount is less, as the Claims Administrator may specify in writing.

10. If the owner or operator does not establish alternate financial assurance as required by 310 CMR 30.908(1) and does not obtain written approval from the Department of any such alternate financial assurance within ninety (90) days of receipt by the owner or operator, by the Claims Administrator, and by the Department of a notice that the issuing institution will not extend the letter of credit beyond the current expiration date, the Department shall draw on the letter of credit. The Department may delay drawing on the letter of credit if the issuing institution grants an extension of the term of the letter of credit. During the last thirty (30) days of any such extension, the Department shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in 310 CMR 30.908 or has failed to obtain written approval by the Department of such assurance.

11. No letter of credit shall be terminated without prior written consent of the Department. The Department may return the letter of credit to the issuing institution for termination when the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(1), or when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(e) Each contract between a Claims Administrator and an owner or operator shall conform to 310 CMR 30.908(1)(e)

1. Each contract between a Claims Administrator and an owner or operator shall assure that each party to the contract is obligated by the contract to comply with all the requirements applicable to each party respectively, as set forth in 310 CMR 30.908(1).
2. Prior to executing any contract with a Claims Administrator, the owner or operator shall furnish a copy of the contract to the Department. No contract between a Claims Administrator and an owner or operator shall be signed by either of them without the prior written approval of the Department. The Department may withhold such approval if the Department is not persuaded that (1) the Claims Administrator is a person who can and will properly carry out the responsibilities a Claims Administrator has pursuant to 310 CMR 30.000, or (2) the terms and wording of the contract between the Claims Administrator and the owner or operator are sufficient to protect the Department's interests. The Department shall not unreasonably withhold or delay such approval.
3. The Department shall not be a party to the contract between the Claims Administrator and the owner or operator.
4. No contract between a Claims Administrator and an owner or operator shall be terminated without prior written consent of the Department.
5. Except as provided in Section 9 of the trust agreement, the wording of which is specified in 310 CMR 30.909(8)(a), the Claims Administrator shall not receive, and shall not be eligible to receive, directly or indirectly, any money in any letter of credit or standby trust fund established pursuant to 310 CMR 30.900 and for each he is Claims Administrator.
6. Nothing in 310 CMR 30.900 shall be construed to preclude the Trustee of any trust fund from also being the Contract Administrator for that trust fund.
7. The Claims Administrator shall have the right to refuse to give instructions to pay any claim, the

Department shall have the right to direct the Claims Administrator to refuse to give instructions to pay any claim, and the Department and the Claims Administrator shall each have the right to obtain reimbursement of any claim already paid in whole or in part, if, in the opinion of the Department or the Claims Administrator, as the case may be, the claim is fraudulent, inflated, or otherwise unlawful or unjustified. Any attempt by any person to obtain money from a surety bond, letter of credit, or a trust fund established pursuant to 310 CMR 30.000 by submitting a claim, or assisting in the submission of a claim, that is fraudulent, inflated, or otherwise unlawful or unjustified shall be a violation of 310 CMR 30.000 and, in addition, shall be subject to all laws governing fraud.

(2) Coverage for nonsudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility which is either described in 310 CMR 30.901(1)(b) or so required by the Department pursuant to 310 CMR 30.908(4), or a group of such facilities in Massachusetts, shall demonstrate assurance of financial responsibility for bodily injury and property damage to third parties caused by each nonsudden accidental occurrence arising from operation of the facility(ies). The owner or operator of each facility shall have and continuously maintain such coverage using either the options specified in 310 CMR 30.908(2)(a) through (d) or the options specified in 310 CMR 30.910. The options specified in 310 CMR 30.908(2)(a) through (d) may be used by the owner or operator of a facility, or a group of such facilities in Massachusetts, provided that the use of such options shall be subject to the provisions of 310 CMR 30.908(5), (6), and (7). The options specified in 310 CMR 30.910 may be used by the owner or operator of each facility, provided that the use of such options shall be subject to the provisions of 310 CMR 30.910. If the owner or operator of a facility, or a group of such facilities in Massachusetts, uses the options specified in 310 CMR 30.908(2)(a) through (d), said owner or operator, subject to the provisions of 310 CMR 30.908(3), (4), and (5), shall have and continuously maintain coverage for nonsudden accidental occurrences in the amount of at least $5-million per each nonsudden accidental occurrence with an annual aggregate of at least $10-million, exclusive of legal defense costs. If the owner or operator of a facility uses the options specified in 310 CMR 30.910, said owner or operator shall have and continuously maintain coverage for nonsudden accidental

occurrences in the amount set forth in 310 CMR 30.910. Unless such assurance of financial responsibility is demonstrated entirely by liability insurance in compliance with 310 CMR 30.908(2)(a), the owner or operator shall also obtain and maintain in effect a contract with a Claims Administrator in compliance with 310 CMR 30.908(2)(e). As used in 310 CMR 30.908(2), the term "Claims Administrator" shall mean a person who shall be responsible for the processing and administration of all requests to make payments from a trust fund, standby trust fund, surety bond or letter of credit pursuant to 310 CMR 30.908(2). The owner or operator of each facility shall give notice to both the Department and the Claims Administrator of every claim for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility(ies). The owner or operator of each facility shall give such notice to both the Department and the Claims Administrator as soon as possible and in any event no later than thirty (30) days after learning of such claim. The owner or operator of each facility shall give notice to both the Department and the Claims Administrator of every judgment against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility. The owner or operator of each facility shall give such notice to both the Department and the Claims Administrator as soon as possible and in any event no later than thirty (30) days after learning of said judgment. The owner or operator of each facility shall submit to the Department a copy of every judgment against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility. The owner or operator of each facility shall submit a copy of such judgment to the Department as soon as possible and in any event no later than thirty (30) days after receiving a copy thereof.

(a) An owner or operator may demonstrate the required coverage by having liability insurance, as specified in 310 CMR 30.901(2) or (6), which conforms to 310 CMR 30.908(2)(a).

1. Each liability insurance policy shall include a Hazardous Waste Facility Liability Endorsement (the "endorsement") and may be evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in 310 CMR 30.909(6). The wording of the certificate of insurance shall be identical to the wording specified in 310 CMR 30.909(7). The owner or

operator shall submit a signed duplicate original of the endorsement or the certificate of liability insurance to the Department. If requested by the Department, the owner or operator shall provide a signed duplicate original of the liability insurance policy. An owner or operator of a facility shall submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Department within the applicable period prescribed in 310 CMR 30.901(2) or (6).

2. At a minimum, the insurer shall be licensed to transact the business of insurance in Massachusetts, or authorized to provide insurance as an excess or surplus lines insurer in Massachusetts, or a risk retention group lawfully providing insurance to its members in Massachusetts.

(b) An owner or operator may demonstrate the required coverage by establishing a nonsudden accidental occurrence liability trust fund, as specified in 310 CMR 30.901(2) or (6), which conforms to 310 CMR 30.908(2)(b), and by sending an originally signed duplicate of the trust agreement to the Department within the applicable time period prescribed in 310 CMR 30.901(2) or (6).

1. The trustee shall be a bank or other financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by the Massachusetts Commissioner of Banking, or the trustee shall be a national bank.

2. The wording of the trust agreement shall be identical to the wording specified in 310 CMR 30.909(8)(a), and the trust agreement shall be accompanied by a formal certification of acknowledgement identical to the wording specified in 310 CMR 30.909(8)(b).

3. On the date of the initial establishment of the nonsudden accidental occurrence liability trust fund, the value of the fund shall be at least ten million dollars ($10,000,000.00), or such other amount as required by the Department pursuant to 310 CMR 30.908(4) or (5).

4. If an owner or operator substitutes other financial assurance as specified in 310 CMR 30.908(2) for all or part of the nonsudden accidental occurrence liability trust fund, he may submit a written request to the Department for release of the amount in excess of the amount to be covered by the nonsudden accidental occurrence liability trust fund.

5. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the nonsudden accidental occurrence liability trust fund in satisfaction of the judgment by submitting to the Claims Administrator a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.

6. After receiving the material described in 310 CMR 30.908(2)(b)5, the Claims Administrator shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Claims Administrator shall instruct the trustee to pay to the person who obtained the judgment such amounts, not to exceed the amount of the judgment or the amount of the limits set forth in 310 CMR 30.908(2), whichever amount is less, as the Claims Administrator may specify in writing.

7. No trust shall be terminated without prior written consent of the Department. The Department may agree to termination of the trust when the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(2), or when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(c) An owner or operator may demonstrate the required coverage by obtaining a surety bond which conforms to 310 CMR 30.908(2)(c) and by submitting the surety bond to the Department within the applicable time period prescribed in 310 CMR 30.901(2) or (6).

1. The surety company(ies) issuing the bond shall, at a minimum, be among those lawfully selling surety bonds in Massachusetts.

2. The wording of the surety bond shall be identical to the wording specified in 310 CMR 30.909(9).
3. An owner or operator who uses a surety bond to satisfy the requirements of 310 CMR 30.908 shall also establish a standby trust fund. Under the terms of the surety bond, all payments made thereunder shall, in accordance with instructions from the Department, either be paid by the surety directly to a person described in 310 CMR 30.908(2)(c)5 or deposited by the surety directly into the standby trust fund. This standby trust fund shall meet the requirements in 310 CMR 30.908(2)(b), except that:
   a. An originally signed duplicate of the trust agreement shall be submitted to the Department with the surety bond; and
   b. Until the standby trust fund is funded pursuant to the requirements of 310 CMR 30.908, the following are not required: (i) payment into the trust fund as specified in 310 CMR 30.908(2)(b); (ii) annual valuations as required by the trust agreement [See 310 CMR 30.909(8)(a)(Section 10)]; and (iii) notices of nonpayment as required by the trust agreement [see 310 CMR 30.909(8)(a)(Section 15)].
4. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the surety bond in satisfaction of the judgment by submitting to the Claims Administrator a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.
5. After receiving the material described in 310 CMR 30.908(2)(c)4, the Claims Administrator shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3)

agreed to by the owner or operator. If so, the Claims Administrator shall instruct the surety company(ies) issuing the bond to pay either to the person making the claim or into the standby trust fund, or the Claims Administrator shall instruct the trustee of the standby trust fund to pay to the person who obtained the judgment, such amounts, not to exceed the amount of the judgment or the amount of the limits set forth in 310 CMR 30.908(2), whichever amount is less, as the Claims Administrator may specify in writing.

6. The bond shall guarantee that the owner or operator shall:

a. Fund the standby trust fund in an amount equal to either the sum of the judgment described in 310 CMR 30.908(2)(c)5 and the costs of administering said fund, or the amount of the penal sum, whichever is less, within fifteen (15) days after the Department or a court of competent jurisdiction issues an order to that effect; or

b. Provide alternate financial assurance as specified in 310 CMR 30.908, and obtain the Department's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and by the Department of a notice of cancellation of the surety bond from the surety.

7. Under the terms of the bond [see 310 CMR 30.909(9)], the surety shall become liable on the bond obligation when the owner or operator does not perform as guaranteed by the bond [see 310 CMR 30.909(9)].

8. The penal sum of the bond shall be at least ten million dollars ($10,000,000.00), or such other amount as required by the Department pursuant to 310 CMR 30.908(4) or (5).

9. Under the terms of the bond, the surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator, to the Claims Administrator, and to the Department. Cancellation may not take effect, however, until at least one hundred twenty (120) days after the date of receipt of the notice of cancellation by the owner or operator, by the Claims Administrator, and by the Department, as shown by the latest return receipt.

10. No bond shall be cancelled without prior written consent of the Department. The Department may agree to cancellation of the bond when the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(2), or when the Department certifies closure of

the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(d) An owner or operator may demonstrate the required coverage by obtaining an irrevocable letter of credit which conforms to 310 CMR 30.908(2)(d) and by submitting the letter to the Department within the applicable time period prescribed in 310 CMR 30.901(2) or (6).

1. The institution issuing the letter of credit shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Massachusetts Commissioner of Banking, or the institution shall be a national bank.

2. The wording of the letter of credit shall be identical to the wording specified in 310 CMR 30.909(10).

3. An owner or operator who uses a letter of credit to satisfy the requirements of 310 CMR 30.908(2) shall also establish a standby trust fund. Under the terms of the letter of credit, all payments made thereunder shall, in accordance with instructions from the Claims Administrator or the Department, either be paid by the issuing institution directly to a person described in 310 CMR 30.908(2)(d)8 or deposited by the issuing institution directly into the standby trust fund. This standby trust fund shall meet the requirements in 310 CMR 30.908(2)(b), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Department with the letter of credit; and

b. Until the standby trust fund is funded pursuant to the requirements of 310 CMR 30.908, the following are not required: (i) payment into the trust fund as specified in 310 CMR 30.908(2)(b); (ii) annual valuations as required by the trust agreement [See 310 CMR 30.909(8)(a)(Section 10)]; and (iii) notices of nonpayment as required by the trust agreement [see 310 CMR 30.909(8)(a)(Section 15)].

4. The letter of credit shall be accompanied by a letter from the owner or operator which shall state:

a. The letter of credit number;

b. The name of the issuing institution;

c. The date of issuance of the letter of credit;

d. The EPA identification number(s) of the facility(ies);

e. The name(s) and address(es) of the facility(ies); and

f. The amount of funds assured by the letter of credit.

5. The letter of credit shall be irrevocable and shall be issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless, no later than one hundred and twenty (120) days before the current expiration date pursuant to the terms of the letter of credit, the issuing institution notifies the owner or operator, the Claims Administrator, and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred and twenty (120) days shall not begin before the date when the owner or operator, the Claims Administrator, and the Department have received the notice, as shown by the latest return receipt.

6. The letter of credit shall be issued in an amount at least ten million dollars ($10,000,000.00), or such other amount as required by the Department pursuant to 310 CMR 30.908(4) or (5).

7. If an owner or operator substitutes other financial assurance as specified in 310 CMR 30.908(2) for all or part of the amount of the letter of credit, he may submit a written request to the Department for release of the amount in excess of the amount to be covered by the letter of credit.

8. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the letter of credit in satisfaction of the judgment by submitting to the Claims Administrator a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.

9. After receiving the material described in 310 CMR 30.908(2)(d)8, the Claims Administrator shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made

by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Claims Administrator shall instruct the institution issuing the letter of credit to pay either to the person making the claim or into the standby trust fund, or the Claims Administrator shall instruct the trustee of the standby trust fund to pay to the person who obtained the judgment, such amounts, not to exceed the amount of the judgment or the amount of the limits set forth in 310 CMR 30.908(2), whichever amount is less, as the Claims Administrator may specify in writing.

10. If the owner or operator does not establish alternate financial assurance as required by 310 CMR 30.908(2) and does not obtain written approval from the Department of any such alternate financial assurance within ninety (90) days of receipt by the owner or operator, by the Claims Administrator, and by the Department of a notice that the issuing institution will not extend the letter of credit beyond the current expiration date, the Department shall draw on the letter of credit. The Department may delay drawing on the letter of credit if the issuing institution grants an extension of the term of the letter of credit. During the last thirty (30) days of any such extension, the Department shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in 310 CMR 30.908 or has failed to obtain written approval by the Department of such assurance.

11. No letter of credit shall be terminated without prior written consent of the Department. The Department may return the letter of credit to the issuing institution for termination when the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(2), or when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(e) Each contract between a Claims Administrator and an owner or operator shall conform to 310 CMR 30.908(2)(e)

1. Each contract between a Claims Administrator and an owner or operator shall assure that each party to the contract is obligated by the contract to comply with all the requirements applicable to each party respectively, as set forth in 310 CMR 30.908(2).

2. Prior to executing any contract with a Claims Administrator, the owner or operator shall furnish a copy of the contract to the Department. No contract

between a Claims Administrator and an owner or operator shall be signed by either of them without the prior written approval of the Department. The Department may withhold such approval if the Department is not persuaded that (1) the Claims Administrator is a person who can and will properly carry out the responsibilities a Claims Administrator has pursuant to 310 CMR 30.000, or (2) the terms and wording of the contract between the Claims Administrator and the owner or operator are sufficient to protect the Department's interests. The Department shall not unreasonably withhold or delay such approval.

3. The Department shall not be a party to the contract between the Claims Administrator and the owner or operator.

4. No contract between a Claims Administrator and an owner or operator shall be terminated without prior written consent of the Department.

5. Except as provided in Section 9 of the trust agreement, the wording of which is specified in 310 CMR 30.909(8)(a), the Claims Administrator shall not receive, and shall not be eligible to receive, directly or indirectly, any money in any letter of credit or standby trust fund established pursuant to 310 CMR 30.900 and for each he is Claims Administrator.

6. Nothing in 310 CMR 30.900 shall be construed to preclude the Trustee of any trust fund from also being the Contract Administrator for that trust fund.

7. The Claims Administrator shall have the right to refuse to give instructions to pay any claim, the Department shall have the right to direct the Claims Administrator to refuse to give instructions to pay any claim, and the Department and the Claims Administrator shall each have the right to obtain reimbursement of any claim already paid in whole or in part, if, in the opinion of the Department or the Claims Administrator, as the case may be, the claim is fraudulent, inflated, or otherwise unlawful or unjustified. Any attempt by any person to obtain money from a surety bond, letter of credit, or a trust fund established pursuant to 310 CMR 30.000 by submitting a claim, or assisting in the submission of a claim, that is fraudulent, inflated, or otherwise unlawful or unjustified shall be a violation of 310 CMR 30.000 and, in addition, shall be subject to all laws governing fraud.

(3) Period of Coverage. Each owner or operator shall continuously provide all required liability coverage for

each facility until the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(4) Adjustments by the Department. If the Department determines that the amount of financial assurance required by 310 CMR 30.908(1) or (2) is not high enough to reflect the degree or duration of risk associated with treatment, storage, or disposal of hazardous waste at a particular facility, the Department may require that the amount of financial assurance be increased to reflect such risk. If the Department determines that there is a significant risk to human health or the environment from nonsudden accidental occurrences resulting from the operation of a facility that is not described in 310 CMR 30.901(1)(b), the Department may require that the owner or operator of such facility comply with 310 CMR 30.908(2). An owner or operator shall furnish to the Department, within a reasonable time, any information which the Department requests to determine whether cause exists for adjusting the amount or type of financial assurance. Any adjustment of the amount or type of financial assurance for a facility which has a license shall be treated as a license modification pursuant to 310 CMR 30.800. Any adjustment of the amount or type of financial assurance for a facility having interim status pursuant to RCRA which does not have a license shall be treated as if it were a license modification pursuant to 310 CMR 30.800.

(5) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 310 CMR 30.908(1) and (2) by establishing more than one financial mechanism per Massachusetts facility. These mechanisms shall be limited to liability insurance, trust funds, surety bonds guaranteeing payment, and letters of credit. These mechanisms shall be in compliance with 310 CMR 30.908(1) and (2), except that it shall be a combination of mechanisms, rather than a single mechanism, which shall provide financial assurance for the amounts required pursuant to 310 CMR 30.908. If an owner or operator uses a trust fund in combination with any other mechanism, he shall use the trust fund as a standby trust fund for those mechanisms for which the establishment of a standby trust fund is required. A single standby trust fund may be used for two or more mechanisms. The Department may use any or all of the mechanisms to provide for financial assurance as required by 310 CMR 30.908.

(6) Use of a financial mechanism for multiple facilities

(a) An owner or operator may use a financial assurance mechanism specified in 310 CMR 30.908 to meet the

requirements of 310 CMR 30.908 for more than one Massachusetts facility.
(b) Evidence of financial assurance submitted to the Department shall include a list showing, for each facility, the EPA identification number, name, address, and amount of funds assured by the mechanism.

(7) Use of a mechanism for assurance of financial responsibility for both sudden accidental occurrences and nonsudden accidental occurrences. An owner or operator may satisfy the requirements for assurance of financial responsibility for both sudden accidental occurrences and nonsudden accidental occurrences and for more than one facility by using liability insurance, a trust fund, a surety bond guaranteeing payment, or a letter of credit, or a combination thereof, which meets the specifications set forth in 310 CMR 30.908. The amount of funds available through the mechanism(s) shall be no less than the sum of funds that would be available if (a) separate mechanism(s) were to be established and required to be maintained.

(8) Payment of claims and judgments by other means. Nothing in 310 CMR 30.000 shall be construed to affect an owner's or operator's right or duty to use other financial mechanisms to satisfy or pay any claim or judgment for bodily injury and/or property damage caused by an accidental occurrence or occurrences arising from the operation of the facility.

3. Effective on and after July 1, 1987, 310 CMR 30.908 is hereby amended by striking out said section and inserting in place thereof the following section:-

30.908: Liability Requirements

(1) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility shall demonstrate assurance of financial responsibility for bodily injury and property damage to third parties caused by each sudden accidental occurrence arising from operation of the facility. The owner or operator of each facility shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $3-million per each sudden accidental occurrence with an annual aggregate of at least $6-million, exclusive of legal defense costs.
(a) Each liability insurance policy shall include a Hazardous Waste Facility Liability Endorsement (the

"endorsement") and may be evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in 310 CMR 30.909(6). The wording of the certificate of insurance shall be identical to the wording specified in 310 CMR 30.909(7). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of liability insurance to the Department. If requested by the Department, the owner or operator shall provide a signed duplicate original of the liability insurance policy. An owner or operator of a facility shall submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Department within the applicable period prescribed in 310 CMR 30.901(2) or (6).

(b) At a minimum, the insurer shall be licensed to transact the business of insurance in Massachusetts, or authorized to provide insurance as an excess or surplus lines insurer in Massachusetts, or a risk retention group lawfully providing insurance to its members in Massachusetts.

(2) Coverage for nonsudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility which is either described in 310 CMR 30.901(1)(b) or so required by the Department pursuant to 310 CMR 30.908(4) shall demonstrate assurance of financial responsibility for bodily injury and property damage to third parties caused by each nonsudden accidental occurrence arising from operation of the facility. The owner or operator of each such facility shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $5-million per each nonsudden accidental occurrence with an annual aggregate of at least $10-million, exclusive of legal defense costs.

(a) Each liability insurance policy shall include a Hazardous Waste Facility Liability Endorsement (the "endorsement") and may be evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in 310 CMR 30.909(6). The wording of the certificate of insurance shall be identical to the wording specified in 310 CMR 30.909(7). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of liability insurance to the Department. If requested by the Department, the owner or operator shall provide a signed duplicate original of the liability insurance policy. An owner or operator of a facility shall submit the signed duplicate original of the Hazardous Waste

Facility Liability Endorsement or the Certificate of Liability Insurance to the Department within the applicable period prescribed in 310 CMR 30.901(2) or (6).
(b) At a minimum, the insurer shall be licensed to transact the business of insurance in Massachusetts, or authorized to provide insurance as an excess or surplus lines insurer in Massachusetts, or a risk retention group lawfully providing insurance to its members in Massachusetts.

(3) Period of Coverage. Each owner or operator shall continuously provide all required liability coverage for each facility until the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(4) Adjustments by the Department. If the Department determines that the amount of financial assurance required by 310 CMR 30.908(1) or (2) is not high enough to reflect the degree or duration of risk associated with treatment, storage, or disposal of hazardous waste at a particular facility, the Department may require that the amount of financial assurance be increased to reflect such risk. If the Department determines that there is a significant risk to human health or the environment from nonsudden accidental occurrences resulting from the operation of a facility that is not described in 310 CMR 30.901(1)(b), the Department may require that the owner or operator of such facility comply with 310 CMR 30.908(2). An owner or operator shall furnish to the Department, within a reasonable time, any information which the Department requests to determine whether cause exists for adjusting the amount or type of financial assurance. Any adjustment of the amount or type of financial assurance for a facility which has a license shall be treated as a license modification pursuant to 310 CMR 30.800. Any adjustment of the amount or type of financial assurance for a facility having interim status pursuant to RCRA which does not have a license shall be treated as if it were a license modification pursuant to 310 CMR 30.800.

4. Effective July 1, 1987 through June 30, 1988, 310 CMR 30.909 is hereby amended by inserting after subsection (7) the following subsections:-

(8) Trust Instruments for Financial Assurance for Accidental Occurrences.
(a) A trust agreement for a trust fund established pursuant to 310 CMR 30.908(1)(b), (c), or (d), or pursuant to 310 CMR 30.908(2)(b), (c), or (d), shall be

worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

TRUST AGREEMENT

This Trust Agreement, hereafter referred to as the "Agreement", is entered into as of [date] by and between [name of the owner of operator], a [name of State] [insert "corporation", "partnership", "association", "trust", or "individual"], hereafter referred to as the "Grantor", and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], hereafter referred to as the "Trustee".

Whereas the Department of Environmental Quality Engineering, hereafter referred to as the "Department", an agency of the Commonwealth of Massachusetts, has established certain regulations applicable to the Grantor, requiring that the Grantor shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by each sudden accidental occurrence and/or each nonsudden accidental occurrence arising from operation of the facility identified in Schedule A; and

Whereas, the Grantor has elected to establish a [insert either "trust fund" or "stand-by trust fund"] to demonstrate all or part of such financial responsibility for the facility identified in Schedule A; and

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

(a) The term "Grantor" means [name of the owner or operator].

(b) The term "Trustee" means [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], and any successor thereof.

(c) The terms "Department" and "Beneficiary" mean the Department of Environmental Quality Engineering, an agency of the Commonwealth of Massachusetts, and any successor of the said Department.

(d) The term "Claim Administrator" means [name of the Claim Administrator], and any successor thereof, who is carrying out the responsibilities of the "Claim Administrator" as set forth in 310 CMR 30.900, as in effect as of the date first written above.

Section 2. Identification of Facilities. This Agreement pertains to the facilities identified on the attached Schedule A [on attached Schedule A list each facility, and for each facility list the EPA identification number, name, and address for which financial responsibility is demonstrated by this Agreement].

Section 3. Establishment of Trust Fund. The Grantor and the Trustee hereby establish a trust fund (the "Fund") for the benefit of the Department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in the attached Schedule B. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible, nor shall it undertake any responsibility, for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Bodily Injury and Property Damage to Third Parties. The Trustee shall make payments from the Fund as directed by the Claims Administrator or by the Department in writing. Said payments shall provide for payments from the Fund to the Department or to other persons, as specified in writing by the Claims Administrator or by the Department, for bodily injury and property damage caused by each sudden accidental occurrence and/or each nonsudden accidental occurrence arising from operation of the facility covered by this Agreement. Such payment(s) shall be in such amount(s) as the Claims Administrator or the Department directs in writing. In addition, the Trustee shall refund to the Grantor such amount(s) as the Claims Administrator or the Department specifies in writing. Upon payment or refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash, securities, or other assets acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the principle and income of the Fund, the Trustee shall discharge his duties with

respect to the trust fund solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any affiliates of the Grantor, as defined in the Investment Company Act of 1940, as amended, 14 U.S.C. §80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;
(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 14 U.S.C. §§80a-1 et. seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it by public or private sale;
(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other Fiduciary capacities, or to

deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund.

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, no later than June 1, furnish to the Grantor, to the Claims Administrator, and to the Department a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no later than May 1. The failure of the Grantor to object in writing to the Trustee within ninety (90) days after the statement has been furnished to the Grantor, the Claims Administrator, and the Department shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the interpretation of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department, the Claims Administrator, and the present Trustee by certified mail at least ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule C or such other designees as the Grantor may designate by amendment to Schedule C. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Claims Administrator to the Trustee shall be in writing, signed by the Claims Administrator, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Commissioner or his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor, the Claims Administrator, or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Claims Administrator and/or the Department except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor, the Claims Administrator, and the Department by certified mail by no later than August 10 if no payment into the Fund is received from the Grantor during the month of July.

Section 16. Amendment of Agreement. This Agreement may be amended by an instruction in writing executed by the Grantor, the Trustee,

and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated by the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of the Trust, or in carrying out any directions by the Grantor, by the Claims Administrator, or by the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Massachusetts.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not effect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written above. The parties below certify that the wording of this Agreement is identical to the wording specified in 310 CMR 30.909(8)(a) as in effect on the date first written above.

[Signature of Grantor]
[Title]

Attest:
[Title]
[Seal]

[Signature of Trustee]

Attest:
[Title]
[Seal]

(b) Each certification of acknowledgement which shall accompany a trust agreement for a trust fund as required by 310 CMR 30.908 and 30.909(8)(a) shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

State of [Name of State]

County of [Name of County]

On this [date], before me personally came [owner or operator] to me known, who being by me duly sworn, did depose and say that she/he [strike one] resides at [address], that she/he [strike one] is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he [strike one] knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he [strike one] signed her/his [strike one] name thereto by like order.

[Signature of Notary Public]

My Commission expires: [Date]

(9) Surety Bonds for Financial Assurance for Accidental Occurrences. A surety bond guaranteeing payment as specified in 310 CMR 30.908(1)(c) and 310 CMR 30.908(2)(c) shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

FINANCIAL GUARANTEE BOND

Date bond executed: [Date]

Effective date: [Date]

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual", "trust", "partnership" "corporation", or "association"]

State of incorporation: [Name of State]

Surety(ies): [name(s) and business address(es) (EPA Identification Number, name, address, and sudden accidental occurrence and/or nonsudden accidental occurrence amount(s) for each facility guaranteed by this bond (indicate sudden accidental occurrence and nonsudden accidental occurrence amounts separately)]:

Total penal sum of bond: $_____[Amount]_____

Surety's bond number: $_____[Number]_____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Department of Environmental Quality Engineering of the Commonwealth of Massachusetts, hereinafter called the Department, in the above penal sum, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, pursuant to G.L. c. 21C and 310 CMR 30.000, to have a license or interim status in order to own or operate each facility identified above, and

Whereas said Principal is required, pursuant to 310 CMR 30.908, to demonstrate financial responsibility for bodily injury and property damage to third parties caused by each sudden accidental occurrence, or each sudden accidental occurrence and each nonsudden accidental occurrence, as a condition of the license or interim status, and

Whereas the amount of such financial responsibility that must be demonstrated is $3-million per each sudden accidental occurrence with an annual aggregate of at least $6-million, exclusive of legal defense costs, and $5-million per each nonsudden accidental occurrence with an annual aggregate of at least $10-million, exclusive of legal defense costs.

Whereas said Principal is required, pursuant to 310 CMR 30.908, to retain a Claims Administrator to carry out the responsibilities of the "Claim Administrator" as set forth in 310 CMR 30.900, as in effect as of the date first written above.

NOW, THEREFORE, the condition of this obligation is such that if, while this bond is in effect, the Principal shall pay, up to the limits set forth above, for bodily injury and property damage caused by accidental occurrences arising from operation of any facility identified above, as set forth in 310 CMR 30.908, then this bond

shall be null and void; otherwise it is to remain in full force and effect,

Or, if the Principal shall establish and fund the standby trust fund in such amount(s) within fifteen (15) days after the Department or a court of competent jurisdiction issues an order to do so,

Or, if the Principal shall provide alternate financial assurance, as specified in 310 CMR 30.908(1) or (2) as applicable, and obtain the Department's written approval of such assurance, within ninety (90) days after receipt of notice of cancellation by both the Principal, the Claims Administrator, and the Department from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Claims Administrator or the Department that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall fulfill this obligation. However, no liability shall attach to the Surety(ies) hereunder until the Principal, the Claims Administrator, or the Department notifies the Surety(ies) of a possible claim for bodily injury and/or property damage caused by accidental occurrences arising from operation of the facility(ies) identified above. Such notice shall automatically extend, for a period of six years, the obligation of the Surety(ies) to pay for bodily injury and property damage caused by such accidental occurrences prior to the date upon which this Surety Bond would otherwise have been terminated.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Claims Administrator or by the Department that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Claims Administrator or the Department.

The Surety(ies) shall become liable on this bond obligation only for amounts for which it (they) has (have) been presented a final judgment against the Principal for bodily injury and/or property damage caused by an accidental occurrence or occurrences arising from the operation of the facility(ies) identified above. Said judgment shall have been either (1) rendered by the highest court in the jurisdiction where the action was brought and the Principal exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the Principal to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the Principal.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, to the Claims Administrator, and to the Department, provided, however, that cancellation shall not take effect until at least one hundred and twenty (120) days after the date of receipt of the notice of cancellation by the Principal, the Claims Administrator, and the Department, as shown by the later return receipt, and provided further that such notice shall not discharge any obligations of the Surety(ies) hereunder which may have arisen prior to the receipt of such notice.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization by the Department for termination of the bond.

[The following paragraph is an optional rider that may be included but is not required].

The Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount of financial responsibility for bodily injury and property damage to third parties caused by accidental occurrences, provided that the penal sum does not increase by more than 20% in any one year, and no decrease in the penal sum takes place without the written approval of the Department.

In witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The individuals whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 310 CMR 30.909(9) as in effect on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name(s) and address(es)]

State of incorporation _____[Name of State]_____

Liability limit: $_____[Amount]_____

[Signature(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for the Surety above.]

Bond premium: $_____[Amount]_____

(10) Letters of Credit for Financial Assurance for Accidental Occurrences. A letter of credit as specified in 310 CMR 30.908(1)(d) and 310 CMR 30.908(2)(d) shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT

Commissioner,
Department of Environmental Quality Engineering
Commonwealth of Massachusetts

[Insert here the name and address of the Claims Administrator]

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. ___[Number]___ in favor of the Department of Environmental Quality Engineering, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars ($ [Amount]), available upon presentation, by the Commissioner, the Commissioner's designee, or [insert here the name of the Claims Administrator], of

(1) A sight draft, signed by either the Commissioner, the Commissioner's designee, or [insert here the name of the Claims Administrator], bearing reference to this letter of credit No. ___[Number]___, and

(2) A statement, signed by either the Commissioner, the Commissioner's designee, or [insert here the name of the Claims Administrator], and reading as follows: "I certify that the amount of the draft is payable pursuant to 310 CMR 30.908 and 30.909, regulations issued under authority of Massachusetts General Laws, Chapter 21C."

This letter of credit is effective as of [date] and shall expire on [date at least one (1) year later], but such expiration date shall be automatically extended for a period of [at least one (1) year] on [date] and on each successive expiration date, unless, at least one hundred and twenty (120) days before the current expiration date, we notify the Commissioner, [insert here the name

of the Claims Administrator], and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event such notice has been received, any unused portion of the credit shall be available upon presentation of a sight draft, signed by either the Commissioner, the Commissioner's designee, or [insert here the name of the Claims Administrator], within one hundred and twenty (120) days after the date of receipt of notification by the Commissioner, [insert here the name of the Claims Administrator], and [owner's or operator's name], as shown on the latest signed return receipt.

Whenever this letter of credit is drawn on, under, and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall pay the amount of the draft in accordance with the instructions given us by the Commissioner, the Commissioner's designee, or [insert here the name of the Claims Administrator].

We certify that the wording of this letter of credit is identical to the wording specified in 310 CMR 30.909(10) as in effect on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce", or "the Uniform Commercial Code"]

5. 310 CMR 30.909(8), (9), and (10) shall not be effective on and after July 1, 1988.

6. Effective July 1, 1987 through June 30, 1988, 310 CMR 30.900 is hereby further amended by inserting after 310 CMR 30.909 the following section:-

30.910: Special Options for Facilities Relying on the Hazardous Waste Licensees Insolvency Fund

(1) Coverage for sudden accidental occurrences. The owner or operator of a hazardous waste treatment, storage, or disposal facility may demonstrate assurance of financial responsibility for bodily injury and property damage to third parties caused by each sudden accidental occurrence arising from operation of the facility by using one of the options specified in 310 CMR 30.910 in lieu of the options specified in 310 CMR 30.908(1)(a) through (d), but only if

the owner or operator meets the eligibility requirements set forth in 310 CMR 30.910(1)(a), the amount of coverage for sudden accidental occurrences is in compliance with 310 CMR 30.910(1)(b), the form of coverage is in compliance with 310 CMR 30.910, and the owner or operator obtains and maintains in effect a contract with a Claims Administrator in compliance with 310 CMR 30.910(1)(e); otherwise, the owner or operator shall use the options set forth in 310 CMR 30.908(1)(a) through (d). In all events, the provisions of the introductory paragraph of 310 CMR 30.908(1), and the provisions of 310 CMR 30.908(3) through (8), shall apply to 310 CMR 30.910. As used in 310 CMR 30.910(1), the term "Claims Administrator" shall mean a person who shall be responsible for the processing and administration of all requests to make payments from a trust fund, standby trust fund, or letter of credit pursuant to 310 CMR 30.910(1). The owner or operator of each facility shall give notice to both the Department and the Claims Administrator of every claim for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility(ies). The owner or operator of each facility shall give such notice to both the Department and the Claims Administrator as soon as possible and in any event no later than thirty (30) days after learning of such claim. The owner or operator of each facility shall give notice to both the Department and the Claims Administrator of every judgment against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility. The owner or operator of each facility shall give such notice to both the Department and the Claims Administrator as soon as possible and in any event no later than thirty (30) days after learning of said judgment.

(a) Eligibility. An owner or operator may use the options set forth in 310 CMR 30.910 only if the owner or operator persuades the Department that, despite reasonable efforts, he could not obtain at all, or could not obtain at an annual cost equal to or less than the applicable amount set forth in 310 CMR 30.910(1)(b), liability coverage in compliance with 310 CMR 30.908(1)(a) for sudden accidental occurrences in the amount of at least $3-million per each sudden accidental occurrence with an annual aggregate of at least $6-million, exclusive of legal defense costs.

(b) Required Amount. If the owner or operator is eligible to, and does, use the options set forth in 310 CMR 30.910, the minimum amount of coverage for sudden accidental occurrences shall be as set forth below, or such other amount as required by the Department pursuant

to 310 CMR 30.908(4) or (5). The required amount shall be in the funding mechanism when the funding mechanism is first established, and an amount equal to said required amount shall be placed in either the same funding mechanism or a new funding mechanism on or before April 1 of each year thereafter for as long as 310 CMR 30.910 remains in effect.

1. If the facility is licensed only to store only waste oil, and does no more than this; or if the facility is a facility having interim status pursuant to RCRA and said facility is authorized only to store only waste oil, and does no more than this; the required amount shall be $15,000 per year.
2. If the facility is licensed only to store less than 50,000 gallons of any hazardous waste, other than waste oil, at any one time, and does no more than this; or if the facility is a facility having interim status pursuant to RCRA and said facility is authorized only to store less than 50,000 gallons of any hazardous waste, other than waste oil, at any one time, and does no more than this; the required amount shall be $25,000 per year.
3. If the facility is licensed only to store 50,000 gallons or more of any hazardous waste, other than waste oil, at any one time, and does no more than this; or if the facility is a facility having interim status pursuant to RCRA and said facility is authorized only to store 50,000 gallons or more of any hazardous waste, other than waste oil, at any one time, and does no more than this; the required amount shall be $60,000 per year.
4. For all other facilities, the required amount shall be $75,000 per year.

(c) Trust Fund Requirements. An owner or operator may demonstrate the required coverage by establishing a sudden accidental occurrence special trust fund, which shall be established and maintained in compliance with the following requirements:

1. The owner or operator shall establish the trust fund, and shall send an originally signed duplicate of the trust agreement to the Department, within the applicable time period prescribed in 310 CMR 30.901(2) or (6).
2. The trustee shall be a bank or other financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by the Massachusetts Commissioner of Banking, or the trustee shall be a national bank.

3. The wording of the trust agreement shall be identical to the wording specified in 310 CMR 30.910(3)(a), and the trust agreement shall be accompanied by a formal certification of acknowledgement identical to the wording specified in 310 CMR 30.910(3)(b).
4. On the date of the initial establishment of the sudden accidental occurrence special trust fund, the value of the trust fund shall be at least the amount required pursuant to 310 CMR 30.910(1)(b), or such other amount as required by the Department pursuant to 310 CMR 30.908(4) or (5).
5. If an owner or operator substitutes other financial assurance, as specified in 310 CMR 30.908(1) or 30.910, for the sudden accidental occurrence special trust fund, he may submit a written request to the Department for release of the amount in the trust fund.
6. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the sudden accidental occurrence liability trust fund in satisfaction of the judgment by submitting to the Claims Administrator a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.
7. After receiving the material described in 310 CMR 30.910(1)(c)6, the Claims Administrator shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Claims Administrator shall instruct the trustee to pay to the person who obtained the judgment such amounts, not to exceed the amount of the judgment or the amount then in the sudden accidental occurrence special trust

fund, whichever amount is less, as the Claims Administrator may specify in writing.

8. To the extent such action is authorized or required by law, the Claims Administrator or the Department may instruct the trustee to pay to the Hazardous Waste Licensees Insolvency Fund or to the Commonwealth of Massachusetts such amounts, not to exceed the amount then in the trust fund, as may be authorized or required by law.

9. No trust shall be terminated without prior written consent of the Department. The Department may agree to termination of the trust when the Department is persuaded that such action is consistent with 310 CMR 30.910(1)(c)5 and

a. the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(1) or 30.910, or

b. when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(d) Letter of Credit Requirements. An owner or operator may demonstrate the required coverage by obtaining an irrevocable letter of credit which shall be obtained and maintained in compliance with the following requirements:

1. The owner or operator shall obtain the letter of credit and submit it to the Department within the applicable time period prescribed in 310 CMR 30.901(2) or (6).

2. The institution issuing the letter of credit shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Massachusetts Commissioner of Banking, or the institution shall be a national bank.

3. The wording of the letter of credit shall be identical to the wording specified in 310 CMR 30.910(3)(c).

4. The letter of credit shall be accompanied by a letter from the owner or operator which shall state:

a. The letter of credit number;

b. The name of the issuing institution;

c. The date of issuance of the letter of credit;

d. The EPA identification number(s) of the facility;

e. The name and address of the facility; and

f. The amount of funds assured by the letter of credit.

5. The letter of credit shall be irrevocable and shall be issued for a period of at least one year.

The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless, no later than one hundred and twenty (120) days before the current expiration date pursuant to the terms of the letter of credit, the issuing institution notifies the owner or operator, the Claims Administrator, and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred and twenty (120) days shall not begin before the date when the owner or operator, the Claims Administrator, and the Department have received the notice, as shown by the latest return receipt.

6. If the owner or operator does not establish alternate financial assurance as required by 310 CMR 30.908(1) and does not obtain written approval from the Department of any such alternate financial assurance within ninety (90) days of receipt by the owner or operator, by the Claims Administrator, and by the Department of a notice that the issuing institution will not extend the letter of credit beyond the current expiration date, the Department shall draw on the letter of credit. The Department may delay drawing on the letter of credit if the issuing institution grants an extension of the term of the letter of credit. During the last thirty (30) days of any such extension, the Department shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in 310 CMR 30.910 or has failed to obtain written approval by the Department of such assurance.

7. An owner or operator who uses a letter of credit to satisfy the requirements of 310 CMR 30.910 shall also establish a standby trust fund. Under the terms of the letter of credit, all payments made thereunder shall, in accordance with instructions from the Claims Administrator or the Department, either be paid by the issuing institution directly to a person described in 310 CMR 30.910(1)(d)9, or paid by the issuing institution directly to the Hazardous Waste Licensees Insolvency Fund or to the Commonwealth of Massachusetts in accordance with 310 CMR 30.910(1)(d)11, or deposited by the issuing institution directly into the standby trust fund. This standby trust fund shall meet the requirements in 310 CMR 30.910(1)(c), except that:

   a. An originally signed duplicate of the trust agreement shall be submitted to the Department with the letter of credit; and

b. Until the standby trust fund is funded pursuant to the requirements of 310 CMR 30.910, the following are not required: (i) payment into the trust fund as specified in 310 CMR 30.910(1)(c); (ii) annual valuations as required by the trust agreement [See 310 CMR 30.910(3)(a)(Section 10)]; and (iii) notices of nonpayment as required by the trust agreement [see 310 CMR 30.910(3)(a)(Section 15)].

8. If an owner or operator substitutes other financial assurance as specified in 310 CMR 30.908(1) for all or part of the amount of the letter of credit, he may submit a written request to the Department for release of the amount in excess of the amount to be covered by the letter of credit.

9. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the letter of credit in satisfaction of the judgment by submitting to the Claims Administrator a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.

10. After receiving the material described in 310 CMR 30.910(1)(d)9, the Claims Administrator shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Claims Administrator shall instruct the institution issuing the letter of credit to pay either to the person making the claim or into the standby trust fund, or the Claims Administrator shall instruct the trustee of the standby trust fund to pay to the person who obtained the judgment, such amounts, not to exceed the amount of the judgment or the amount in the letter of credit, whichever amount is less, as the Claims Administrator may specify in writing.

11. To the extent such action is authorized or required by law, the Claims Administrator or the Department may instruct the institution issuing the letter of credit to pay to the Hazardous Waste Licensees Insolvency Fund or to the Commonwealth of Massachusetts such amounts, not to exceed the amount then in the letter of credit, as may be authorized or required by law.

12. No letter of credit shall be terminated without prior written consent of the Department. The Department may return the letter of credit to the issuing institution for termination when the Department is persuaded that such action is consistent with 310 CMR 30.910(1)(c)8 and

a. the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(1) or 30.910, or

b. when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(e) Requirements for a Contract with a Claims Administrator. Each contract between a Claims Administrator and an owner or operator shall conform to 310 CMR 30.910(1)(e)

1. Each contract between a Claims Administrator and an owner or operator shall assure that each party to the contract is obligated by the contract to comply with all the requirements applicable to each party respectively, as set forth in 310 CMR 30.910(1).

2. Prior to executing any contract with a Claims Administrator, the owner or operator shall furnish a copy of the contract to the Department. No contract between a Claims Administrator and an owner or operator shall be signed by either of them without the prior written approval of the Department. The Department may withhold such approval if the Department is not persuaded that (1) the Claims Administrator is a person who can and will properly carry out the responsibilities a Claims Administrator has pursuant to 310 CMR 30.000, or (2) the terms and wording of the contract between the Claims Administrator and the owner or operator are sufficient to protect the Department's interests. The Department shall not unreasonably withhold or delay such approval.

3. The Department shall not be a party to the contract between the Claims Administrator and the owner or operator.

4. No contract between a Claims Administrator and an owner or operator shall be terminated without prior written consent of the Department.
5. Except as provided in Section 9 of the trust agreement, the wording of which is specified in 310 CMR 30.910(3)(a), the Claims Administrator shall not receive, and shall not be eligible to receive, directly or indirectly, any money in any letter of credit or standby trust fund established pursuant to 310 CMR 30.900 and for each he is Claims Administrator.
6. Nothing in 310 CMR 30.900 shall be construed to preclude the Trustee of any trust fund from also being the Contract Administrator for that trust fund.
7. The Claims Administrator shall have the right to refuse to give instructions to pay any claim, the Department shall have the right to direct the Claims Administrator to refuse to give instructions to pay any claim, and the Department and the Claims Administrator shall each have the right to obtain reimbursement of any claim already paid in whole or in part, if, in the opinion of the Department or the Claims Administrator, as the case may be, the claim is fraudulent, inflated, or otherwise unlawful or unjustified. Any attempt by any person to obtain money from a surety bond, letter of credit, or a trust fund established pursuant to 310 CMR 30.000 by submitting a claim, or assisting in the submission of a claim, that is fraudulent, inflated, or otherwise unlawful or unjustified shall be a violation of 310 CMR 30.000 and, in addition, shall be subject to all laws governing fraud.

(2) Coverage for nonsudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility which is subject to 310 CMR 30.908(2) may demonstrate assurance of financial responsibility for bodily injury and property damage to third parties caused by each nonsudden accidental occurrence arising from operation of the facility by using one of the options specified in 310 CMR 30.910 in lieu of the options specified in 310 CMR 30.908(2)(a) through (d), but only if the owner or operator meets the eligibility requirements set forth in 310 CMR 30.910(2)(a), the amount of coverage for nonsudden accidental occurrences is in compliance with 310 CMR 30.910(2)(b), the form of coverage is in compliance with 310 CMR 30.910, and the owner or operator obtains and maintains in effect a contract with a Claims Administrator in compliance with 310 CMR 30.910(2)(e); otherwise, the owner or operator shall use the options set forth in 310 CMR

30.908(2)(a) through (d). In all events, the provisions of the introductory paragraph of 310 CMR 30.908(2), and the provisions of 310 CMR 30.908(3) through (8), shall apply to 310 CMR 30.910. As used in 310 CMR 30.910(2), the term "Claims Administrator" shall mean a person who shall be responsible for the processing and administration of all requests to make payments from a trust fund, standby trust fund, or letter of credit pursuant to 310 CMR 30.910(2). The owner or operator of each facility shall give notice to both the Department and the Claims Administrator of every claim for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility(ies). The owner or operator of each facility shall give such notice to both the Department and the Claims Administrator as soon as possible and in any event no later than thirty (30) days after learning of such claim. The owner or operator of each facility shall give notice to both the Department and the Claims Administrator of every judgment against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility. The owner or operator of each facility shall give such notice to both the Department and the Claims Administrator as soon as possible and in any event no later than thirty (30) days after learning of said judgment.

(a) Eligibility. An owner or operator may use the options set forth in 310 CMR 30.910 only if the owner or operator persuades the Department that, despite reasonable efforts, he could not obtain at all, or could not obtain at an annual cost equal to or less than the applicable amount set forth in 310 CMR 30.910(2)(b), liability coverage in compliance with 310 CMR 30.908(2)(a) for nonsudden accidental occurrences in the amount of at least $5-million per each nonsudden accidental occurrence with an annual aggregate of at least $10-million, exclusive of legal defense costs.

(b) Required Amount. If the owner or operator is eligible to, and does, use the options set forth in 310 CMR 30.910, the minimum amount of coverage for nonsudden accidental occurrences shall be as set forth below, or such other amount as required by the Department pursuant to 310 CMR 30.908(4) or (5). The required amount shall be in the funding mechanism when the funding mechanism is first established, and an amount equal to said required amount shall be placed in either the same funding mechanism or a new funding mechanism on or before April 1 of each year thereafter for as long as 310 CMR 30.910 remains in effect.

1. If the facility is licensed only to store only waste oil, and does no more than this; or if the facility is a facility having interim status pursuant to RCRA and said facility is authorized only to store only waste oil, and does no more than this; the required amount shall be $15,000 per year.
2. If the facility is licensed only to store less than 50,000 gallons of any hazardous waste, other than waste oil, at any one time, and does no more than this; or if the facility is a facility having interim status pursuant to RCRA and said facility is authorized only to store less than 50,000 gallons of any hazardous waste, other than waste oil, at any one time, and does no more than this; the required amount shall be $25,000 per year.
3. If the facility is licensed only to store 50,000 gallons or more of any hazardous waste, other than waste oil, at any one time, and does no more than this; or if the facility is a facility having interim status pursuant to RCRA and said facility is authorized only to store 50,000 gallons or more of any hazardous waste, other than waste oil, at any one time, and does no more than this; the required amount shall be $60,000 per year.
4. For all other facilities, the required amount shall be $75,000 per year.

(c) Trust Fund Requirements. An owner or operator may demonstrate the required coverage by establishing a nonsudden accidental occurrence special trust fund, which shall be established and maintained in compliance with the following requirements:

1. The owner or operator shall establish the trust fund, and shall send an originally signed duplicate of the trust agreement to the Department, within the applicable time period prescribed in 310 CMR 30.901(2) or (6).
2. The trustee shall be a bank or other financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by the Massachusetts Commissioner of Banking, or the trustee shall be a national bank.
3. The wording of the trust agreement shall be identical to the wording specified in 310 CMR 30.910(3)(a), and the trust agreement shall be accompanied by a formal certification of acknowledgement identical to the wording specified in 310 CMR 30.910(3)(b).
4. On the date of the initial establishment of the nonsudden accidental occurrence special trust fund,

the value of the trust fund shall be at least the amount required pursuant to 310 CMR 30.910(2)(b), or such other amount as required by the Department pursuant to 310 CMR 30.908(4) or (5).

5. If an owner or operator substitutes other financial assurance, as specified in 310 CMR 30.908(2) or 30.910, for the nonsudden accidental occurrence special trust fund, he may submit a written request to the Department for release of the amount in the trust fund.

6. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the nonsudden accidental occurrence liability trust fund in satisfaction of the judgment by submitting to the Claims Administrator a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.

7. After receiving the material described in 310 CMR 30.910(2)(c)6, the Claims Administrator shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Claims Administrator shall instruct the trustee to pay to the person who obtained the judgment such amounts, not to exceed the amount of the judgment or the amount then in the nonsudden accidental occurrence special trust fund, whichever amount is less, as the Claims Administrator may specify in writing.

8. To the extent such action is authorized or required by law, the Claims Administrator or the Department may instruct the trustee to pay to the Hazardous Waste Licensees Insolvency Fund or to the Commonwealth of Massachusetts such amounts, not to exceed the amount then in the trust fund, as may be authorized or required by law.

9. No trust shall be terminated without prior written consent of the Department. The Department may agree to termination of the trust when the Department is persuaded that such action is consistent with 310 CMR 30.910(2)(c)5 and

a. the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(2) or 30.910, or

b. when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(d) Letter of Credit Requirements. An owner or operator may demonstrate the required coverage by obtaining an irrevocable letter of credit which shall be obtained and maintained in compliance with the following requirements:

1. The owner or operator shall obtain the letter of credit and submit it to the Department within the applicable time period prescribed in 310 CMR 30.901(2) or (6).

2. The institution issuing the letter of credit shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Massachusetts Commissioner of Banking, or the institution shall be a national bank.

3. The wording of the letter of credit shall be identical to the wording specified in 310 CMR 30.910(3)(c).

4. The letter of credit shall be accompanied by a letter from the owner or operator which shall state:

a. The letter of credit number;

b. The name of the issuing institution;

c. The date of issuance of the letter of credit;

d. The EPA identification number(s) of the facility;

e. The name and address of the facility; and

f. The amount of funds assured by the letter of credit.

5. The letter of credit shall be irrevocable and shall be issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless, no later than one hundred and twenty (120) days before the current expiration date pursuant to the terms of the letter of credit, the issuing institution notifies the owner or operator, the Claims Administrator, and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of

credit, the one hundred and twenty (120) days shall not begin before the date when the owner or operator, the Claims Administrator, and the Department have received the notice, as shown by the latest return receipt.

6. If the owner or operator does not establish alternate financial assurance as required by 310 CMR 30.908(2) and does not obtain written approval from the Department of any such alternate financial assurance within ninety (90) days of receipt by the owner or operator, by the Claims Administrator, and by the Department of a notice that the issuing institution will not extend the letter of credit beyond the current expiration date, the Department shall draw on the letter of credit. The Department may delay drawing on the letter of credit if the issuing institution grants an extension of the term of the letter of credit. During the last thirty (30) days of any such extension, the Department shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in 310 CMR 30.910 or has failed to obtain written approval by the Department of such assurance.

7. An owner or operator who uses a letter of credit to satisfy the requirements of 310 CMR 30.910 shall also establish a standby trust fund. Under the terms of the letter of credit, all payments made thereunder shall, in accordance with instructions from the Claims Administrator or the Department, either be paid by the issuing institution directly to a person described in 310 CMR 30.910(2)(d)9, or paid by the issuing institution directly to the Hazardous Waste Licensees Insolvency Fund or to the Commonwealth of Massachusetts in accordance with 310 CMR 30.910(2)(d)11, or deposited by the issuing institution directly into the standby trust fund. This standby trust fund shall meet the requirements in 310 CMR 30.910(2)(c), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Department with the letter of credit; and

b. Until the standby trust fund is funded pursuant to the requirements of 310 CMR 30.910, the following are not required: (i) payment into the trust fund as specified in 310 CMR 30.910(2)(c); (ii) annual valuations as required by the trust agreement [See 310 CMR 30.910(3)(a)(Section 10)]; and (iii) notices of nonpayment as required by the trust agreement [see 310 CMR 30.910(3)(a)(Section 15)].

8. If an owner or operator substitutes other financial assurance as specified in 310 CMR 30.908(2) for all or part of the amount of the letter of credit, he may submit a written request to the Department for release of the amount in excess of the amount to be covered by the letter of credit.
9. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the letter of credit in satisfaction of the judgment by submitting to the Claims Administrator a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.
10. After receiving the material described in 310 CMR 30.910(2)(d)9, the Claims Administrator shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Claims Administrator shall instruct the institution issuing the letter of credit to pay either to the person making the claim or into the standby trust fund, or the Claims Administrator shall instruct the trustee of the standby trust fund to pay to the person who obtained the judgment, such amounts, not to exceed the amount of the judgment or the amount in the letter of credit, whichever amount is less, as the Claims Administrator may specify in writing.
11. To the extent such action is authorized or required by law, the Claims Administrator or the Department may instruct the institution issuing the letter of credit to pay to the Hazardous Waste Licensees Insolvency Fund or to the Commonwealth of Massachusetts such amounts, not to exceed the amount then in the letter of credit, as may be authorized or required by law.

12. No letter of credit shall be terminated without prior written consent of the Department. The Department may return the letter of credit to the issuing institution for termination when the Department is persuaded that such action is consistent with 310 CMR 30.910(2)(c)8 and

a. the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(2) or 30.910, or

b. when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(e) Requirements for a Contract with a Claims Administrator. Each contract between a Claims Administrator and an owner or operator shall conform to 310 CMR 30.910(2)(e)

1. Each contract between a Claims Administrator and an owner or operator shall assure that each party to the contract is obligated by the contract to comply with all the requirements applicable to each party respectively, as set forth in 310 CMR 30.910(2).

2. Prior to executing any contract with a Claims Administrator, the owner or operator shall furnish a copy of the contract to the Department. No contract between a Claims Administrator and an owner or operator shall be signed by either of them without the prior written approval of the Department. The Department may withhold such approval if the Department is not persuaded that (1) the Claims Administrator is a person who can and will properly carry out the responsibilities a Claims Administrator has pursuant to 310 CMR 30.000, or (2) the terms and wording of the contract between the Claims Administrator and the owner or operator are sufficient to protect the Department's interests. The Department shall not unreasonably withhold or delay such approval.

3. The Department shall not be a party to the contract between the Claims Administrator and the owner or operator.

4. No contract between a Claims Administrator and an owner or operator shall be terminated without prior written consent of the Department.

5. Except as provided in Section 9 of the trust agreement, the wording of which is specified in 310 CMR 30.910(3)(a), the Claims Administrator shall not receive, and shall not be eligible to receive, directly or indirectly, any money in any letter of credit or standby trust fund established pursuant to 310 CMR 30.900 and for each he is Claims Administrator.

6. Nothing in 310 CMR 30.900 shall be construed to preclude the Trustee of any trust fund from also being the Contract Administrator for that trust fund.
7. The Claims Administrator shall have the right to refuse to give instructions to pay any claim, the Department shall have the right to direct the Claims Administrator to refuse to give instructions to pay any claim, and the Department and the Claims Administrator shall each have the right to obtain reimbursement of any claim already paid in whole or in part, if, in the opinion of the Department or the Claims Administrator, as the case may be, the claim is fraudulent, inflated, or otherwise unlawful or unjustified. Any attempt by any person to obtain money from a surety bond, letter of credit, or a trust fund established pursuant to 310 CMR 30.000 by submitting a claim, or assisting in the submission of a claim, that is fraudulent, inflated, or otherwise unlawful or unjustified shall be a violation of 310 CMR 30.000 and, in addition, shall be subject to all laws governing fraud.

(3) Wording of Financial Instruments Used By Facilities Relying on the Hazardous Waste Licensees Insolvency Fund.

(a) A trust agreement for a trust fund established pursuant to 310 CMR 30.910(1)(c) or (d), or pursuant to 310 CMR 30.908(2)(c) or (d), shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

TRUST AGREEMENT

This Trust Agreement, hereafter referred to as the "Agreement", is entered into as of [date] by and between [name of the owner of operator], a [name of State] [insert "corporation", "partnership", "association", "trust", or "individual"], hereafter referred to as the "Grantor", and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], hereafter referred to as the "Trustee".

Whereas the Department of Environmental Quality Engineering, hereafter referred to as the "Department", an agency of the Commonwealth of Massachusetts, has established certain regulations applicable to the Grantor, requiring that the Grantor shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by each sudden accidental occurrence and/or each nonsudden accidental occurrence arising from operation of the facility identified in Schedule A; and

Whereas, the Grantor has elected to establish a [insert either "trust fund" or "stand-by trust fund"] to demonstrate all or part of such financial responsibility for the facility identified in Schedule A; and

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

(a) The term "Grantor" means [name of the owner or operator].

(b) The term "Trustee" means [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], and any successor thereof.

(c) The terms "Department" and "Beneficiary" mean the Department of Environmental Quality Engineering, an agency of the Commonwealth of Massachusetts, and any successor of the said Department.

(d) The term "Claim Administrator" means [name of the Claim Administrator], and any successor thereof, who is carrying out the responsibilities of the "Claim Administrator" as set forth in 310 CMR 30.900, as in effect as of the date first written above.

Section 2. Identification of Facilities. This Agreement pertains to the facilities identified on the attached Schedule A [on attached Schedule A list each facility, and for each facility list the EPA identification number, name, and address for which financial responsibility is demonstrated by this Agreement].

Section 3. Establishment of Trust Fund. The Grantor and the Trustee hereby establish a trust fund (the "Fund") for the benefit of the Department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in the attached Schedule B. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible, nor shall it undertake any responsibility, for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Bodily Injury and Property Damage to Third Parties. The Trustee shall make payments from the Fund as directed by the Claims Administrator or by the Department in writing. Said payments shall provide for payments from the Fund to the Department or to other persons, as specified in writing by the Claims Administrator or by the Department, for bodily injury and property damage caused by each sudden accidental occurrence and/or each nonsudden accidental occurrence arising from operation of the facility covered by this Agreement. Such payment(s) shall be in such amount(s) as the Claims Administrator or the Department directs in writing. In addition, the Trustee shall refund to the Grantor such amount(s) as the Claims Administrator or the Department specifies in writing. Upon payment or refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash, securities, or other assets acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the principle and income of the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any affiliates of the Grantor, as defined in the Investment Company Act of 1940, an amended, 14 U.S.C. §80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;
(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 14 U.S.C. §§80a-1 et. seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:
(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it by public or private sale;
(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other Fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund.
(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and
(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the

Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, no later than December 1, furnish to the Grantor, to the Claims Administrator, and to the Department a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no later than November 1. The failure of the Grantor to object in writing to the Trustee within ninety (90) days after the statement has been furnished to the Grantor, the Claims Administrator, and the Department shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may, from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the interpretation of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department, the Claims Administrator, and the present Trustee by certified mail at least ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule C or such other designees as the Grantor may designate by amendment to Schedule C. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Claims Administrator to the Trustee shall be in writing, signed by the Claims Administrator, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Commissioner or his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor, the Claims Administrator, or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Claims Administrator and/or the Department except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor, the Claims Administrator, and the Department by certified mail by no later than August 10 if no payment into the Fund is received from the Grantor during the month of July.

Section 16. Amendment of Agreement. This Agreement may be amended by an instruction in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated by the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of the Trust, or in carrying out any directions by the Grantor, by the Claims Administrator, or by the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any

personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Massachusetts.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not effect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written above. The parties below certify that the wording of this Agreement is identical to the wording specified in 310 CMR 30.910(3)(a) as in effect on the date first written above.

[Signature of Grantor]
[Title]

Attest:
[Title]
[Seal]

[Signature of Trustee]

Attest:
[Title]
[Seal]

(b) Each certification of acknowledgement which shall accompany a trust agreement for a trust fund as required by 310 CMR 30.910 shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

State of _____[Name of State]_____

County of _____[Name of County]_____

On this [date], before me personally came [owner or operator] to me known, who being by me duly sworn, did depose and say that she/he [strike one] resides at [address], that she/he [strike one] is [title] of [corporation], the corporation described in and which

executed the above instrument; that she/he [strike one] knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he [strike one] signed her/his [strike one] name thereto by like order.

[Signature of Notary Public]

My Commission expires: [Date]

(c) Letters of Credit for Financial Assurance for Accidental Occurrences. A letter of credit as specified in 310 CMR 30.910(1)(d) and 310 CMR 30.910(2)(d) shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT

Commissioner,
Department of Environmental Quality Engineering
Commonwealth of Massachusetts

[Insert here the name and address of the Claims Administrator]

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. [Number] in favor of the Department of Environmental Quality Engineering, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars ($ [Amount]), available upon presentation, by the Commissioner, the Commissioner's designee, or [insert here the name of the Claims Administrator], of

(1) A sight draft, signed by either the Commissioner, the Commissioner's designee, or [insert here the name of the Claims Administrator], bearing reference to this letter of credit No. [Number], and

(2) A statement, signed by either the Commissioner, the Commissioner's designee, or [insert here the name of the Claims Administrator], and reading as follows: "I certify that the amount of the draft is payable pursuant to 310 CMR 30.910, regulations issued under authority of Massachusetts General Laws, Chapter 21C."

This letter of credit is effective as of [date] and shall expire on [date at least one (1) year later], but such expiration date shall be automatically extended for a period of [at least one (1) year] on [date] and on each successive expiration date, unless, at least one hundred and twenty (120) days before the current

expiration date, we notify the Commissioner, [insert here the name of the Claims Administrator], and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event such notice has been received, any unused portion of the credit shall be available upon presentation of a sight draft, signed by either the Commissioner, the Commissioner's designee, or [insert here the name of the Claims Administrator], within one hundred and twenty (120) days after the date of receipt of notification by the Commissioner, [insert here the name of the Claims Administrator], and [owner's or operator's name], as shown on the latest signed return receipt.

Whenever this letter of credit is drawn on, under, and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall pay the amount of the draft in accordance with the instructions given us by the Commissioner, the Commissioner's designee, or [insert here the name of the Claims Administrator].

We certify that the wording of this letter of credit is identical to the wording specified in 310 CMR 30.910(3)(c) as in effect on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce", or "the Uniform Commercial Code"]

7. 310 CMR 30.910 shall not be effective on and after July 1, 1988.

310 CMR: DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING

AMENDMENTS TO 310 CMR 3.00
PROPOSED AMENDMENTS TO DEPARTMENT REGULATIONS GOVERNING
ACCESS TO AND CONFIDENTIALITY OF DEPARTMENT RECORDS AND FILES

SUMMER 1987

The Department is now resubmitting for public comment certain proposed amendments to 310 CMR 3.00. These proposed amendments are identical to those that were submitted for public comment in 1985. Attached is the Discussion Paper circulated at that time. The Discussion Paper explains in greater detail the content and background of the proposed amendments.

As a result of the public comment process in 1985, it became clear to the Department that legislation, not regulation, was the better solution to the problems associated with the handling of confidentiality requests (what those problems are is explained in the Discussion Paper). Unfortunately, no legislation on this subject has been enacted. Unless legislation is enacted - and enacted soon - the Department will be left with only two options: adopt these regulations (subject to any changes that might be made in response to public comment) or maintain the status quo.

The Department sees no way it can responsibly or lawfully maintain the status quo in this matter. During the last two years, there has been an increase in the number of pending confidentiality requests, and in the number of public records requests the Department has had to deny because these confidentiality requests have been pending. The Department still does not have the resources to conduct adjudicatory proceedings on confidentiality requests except in the most urgent and pressing cases.

These proposed amendments also address the question of who in State government other than the Attorney General should have access to confidential material. This question should also be resolved without further delay.

DISCUSSION

PROPOSED AMENDMENTS TO THE DEPARTMENT'S REGULATIONS GOVERNING ACCESS TO AND CONFIDENTIALITY OF DEPARTMENT RECORDS AND FILES

PUBLIC HEARING DRAFT - SUMMER 1985

I. Introduction

The Department is now proposing two sets of amendments to 310 CMR 3.00, the Department's Regulations Governing Access To And Confidentiality Of Department Records And Files. All of these proposed amendments may be acted on separately or together, depending on public response to these proposals.

One set of amendments would

- specify in greater detail the requirements a person would have to meet before the Department will deem complete his request to keep a record confidential because he thinks its disclosure would divulge a trade secret.

- specify in greater detail the procedures the Department would follow in acting on such a request.

- include transition provisions for bringing currently pending confidentiality requests into conformity with the proposed new requirements and procedures.

- make clear that a person whose confidentiality request is denied is entitled to opportunity for adjudicatory hearing on the denial.

- set forth procedures for the subsequent conduct of the adjudicatory proceeding, including a time limit and other requirements for claiming an adjudicatory hearing.

- reflect the enactment of General Laws, Chapter 111F, commonly known as the "Right-to-Know" Law.

- make certain technical corrections.

The other set of amendments would expand the list of persons to whom the Department would give access to information that either is determined to be confidential or must be treated as confidential pending such a determination.

II. Proposed Amendments Governing Confidentiality Requests

The impetus for proposing these amendments at this time is the decision of the Massachusetts Appeals Court in General Chemical Corporation v. Department of Environmental Quality Engineering, 19 Mass. App. 287, 474 N.E.2d. 183 (Mass. App. Ct. 1985), further

appellate review denied, 394 Mass. 1103, 477 N.E.2d. 595 (Mass. S. Jud. Ct. 1985) ["General Chemical"]. In that decision, the Court said

> °A trade secret is a vested property right.
>
> °A State agency potentially affects this vested property right when it makes a determination as to whether an alleged trade secret is in fact a trade secret.
>
> °Therefore, the person claiming trade secrecy has a constitutional right to some kind of hearing process before the agency.
>
> °General Laws, Chapter 30A specifically says that when a person has a constitutional right to a hearing before a State agency, that hearing must be an adjudicatory hearing.

The Department's present confidentiality regulations were written on the basis that a person wanting a trial-type hearing gets it in Superior Court, not in DEQE. In writing the confidentiality regulations in this way, the Department was relying on the fact that, in the various statutes specifically setting forth the Department's duties and authority, the Legislature provided for adjudicatory hearings with respect to permit decisions and administrative orders but not with respect to confidentiality determinations. The Department took this to mean that the Legislature wanted a person aggrieved by the denial of a confidentiality request to get his due process in the judicial system, not in the Department's adjudicatory hearing system. In General Chemical, the Appeals Court has now held that the Department misinterpreted the intent of the Legislature on this point.

The Court's decision has a number of serious public policy implications that the Court did not discuss but that the Department has been trying to address and will have to go on addressing under the tighter legal constraints now mandated by the Court.

The most important public policy implication flows from the fact that there are two public interests involved which are in conflict and yet must somehow be balanced. One public interest is the right of public access to the contents of government files. The Legislature first expressed recognition of this interest in 1851. Stat. 1851 c. 161, §4. That

interest is now codified in G. L. c. 66, §10, paragraph (c) of which says that in any litigation under that statute, "there shall be a presumption that the record sought is public". The other public interest is, as the Supreme Judicial Court put it in 1868, "to encourage and protect invention and commercial enterprise." The Court said this in Peabody v. Norfolk, 98 Mass. 452, 457, in which the Court first expressed recognition of the property interest known as the "trade secret".

There are other public policy considerations the Department must address. One of the greatest problems Massachusetts faces today is the lack of capacity for safely treating and disposing of hazardous waste in Massachusetts. As a Special Commission of the Legislature found in 1980, 1980 House Document No. 6756, page 14:

> [E]veryone agrees that we need these facilities, 'but not in my backyard'. People perceive themselves as being made much worse off by the nearby location of a hazardous waste facility. This perception arises from the belief that a facility may impose costs on its neighbors. This perception also arises from an awareness that past activities of industry and government have not adequately protected public health and safety, leading to public mistrust.

This public mistrust in government cannot be reduced, and may well be increased, if the Department, as the State's environmental regulatory and enforcement agency, limits public access to the contents of its files.

The Department's present confidentiality regulations were the result of the Department's attempt to address and balance these public interests. The decision of the Appeals Court in General Chemical has upset this balance.

Unless appropriate steps can be and are taken, the Department expects a significant increase in the number of confidentiality requests. This is because industry knows that the adjudicatory hearing process takes a substantial amount of time and resources, confidentiality requests cannot be considered finally denied until the adjudicatory hearing process is completed, and records requested to be confidential must be handled that way until the request is finally denied. Any significant increase in the number of confidentiality requests would have a serious adverse impact on the ability of the public to obtain access to the contents of the Department's files.

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PROPOSED AMENDMENTS TO THE DEPARTMENT'S REGULATIONS GOVERNING ACCESS TO AND CONFIDENTIALITY OF DEPARTMENT RECORDS AND FILES

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The Department is giving serious consideration to proposing legislation to make it explicitly clear that if the Department denies a request to keep a record confidential, the person would be able and required to go directly to court to get his due process.

Unless and until such legislation is enacted, the Department must continue carrying out its responsibilities in a way that both complies with existing law, as now interpreted in General Chemical, and adequately addresses the public interest. In order to do either or both, the Department's currently effective regulations will have to be amended.

For the foregoing reasons, the Department proposes to amend 310 CMR 3.24 and 3.25 as follows.

First, the regulations would be amended to require that a confidentiality request be substantiated in detail no later than 30 days after it is made, on pain of dismissal of the request. Until now, the Department's practice has been to allow persons to request confidentiality by doing no more than saying they want it, and then give these persons second (and more) chances to substantiate their requests. The effect has been to increase the number of requests and prolong the time they have been pending. The regulations now being proposed are based on the view that if a person is unable or unwilling to reasonably substantiate a confidentiality request (the word "reasonable" appears in the regulations governing substantiation of confidentiality requests in order to promote fairness to persons requesting confidentiality while at the same time making it clear that issues must be squarely addressed to at least some extent) at the outset, the Department should determine that the person requesting confidentiality has not taken adequate measures to guard the secrecy of the alleged trade secret, and that the alleged trade secret is not valuable to the person requesting confidentiality, as shown by the person's failure to make the effort necessary to substantiate the confidentiality request in compliance with the regulations, and therefore the alleged trade secret is not really a trade secret at all.

Second, the regulations would be amended to require that, on pain of dismissal of the confidentiality request, the person requesting confidentiality must, as soon as either that person or the Department determines that only a part of a record is entitled to confidentiality, submit two copies of every such record, one copy for the Department's use only and to be kept confidential, and one copy with the confidential portions

removed so that the remainder of the document may be made available to the public. Until now, the Department's practice has been to wait until acting on the confidentiality request before requiring the person making the request to submit the edited version that can be made available to the public. The effect has been that the Department now has thousands of records (mostly copies of submitted hazardous waste manifests) which are the subject of pending confidentiality requests (made mostly by persons other than the persons who actually submitted the records) and which even the persons claiming confidentiality would agree have parts that can be made available to the public. However, those parts cannot be made available to the public because the persons claiming confidentiality have not themselves furnished edited versions of these records to the Department, and the Department does not have the enormous resources needed to itself make edited versions of these records. The Department recognizes that this proposed requirement, if adopted, will put a burden on those requesting confidentiality. However, these proposed regulations are based on the view that if a person is unable or unwilling to meet this burden at the outset, the Department should determine that the person requesting confidentiality has not taken adequate measures to guard the secrecy of the alleged trade secret, and that the alleged trade secret is not valuable to the person requesting confidentiality, as shown by the person's failure to make the effort necessary to substantiate the confidentiality request in compliance with the regulations, and therefore the alleged trade secret is not really a trade secret at all.

Third, the regulations would be amended to explicitly provide for adjudicatory hearings at the request of persons whose confidentiality requests are denied for any reason (including failure to properly substantiate the request at the outset). The regulations would require that an adjudicatory hearing must be requested in writing and received by the Department within 10 calendar days after receipt of notice of the Department's initial denial of the confidentiality request. The regulations would state that if an adjudicatory hearing were not requested and received within this deadline, the initial determination would automatically become final and effective immediately after this deadline, and the records that were the subject of the confidentiality request would thereupon become public records. The regulations would require that the request for adjudicatory hearing state every point of fact and law to be raised by the person requesting the adjudicatory hearing. Otherwise, the regulations would simply incorporate by reference 310 CMR 1.00, the Department's existing Rules for

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Adjudicatory Proceedings. Note that if the Department grants confidentiality, any person aggrieved by that decision would not be entitled to, and would not get, an adjudicatory hearing. Instead, that person would have to go straight to court (and not to the Supervisor of Records in the office of the Secretary of the Commonwealth). The Department bases this result on language in the General Chemical decision.

Fourth, the regulations would be amended to provide that if confidentiality is denied after the conclusion of the Department's adjudicatory hearing procedures, the record will continue to be held confidential for 30 days, instead of the 10 days otherwise prescribed in 310 CMR 3.15 (which itself would be amended to cross-reference this provision). This is because the deadline prescribed in G. L. c. 30A, §14 for judicial review of agency decisions is 30 days. Extensions of this deadline would be allowable only to give effect to the Department's existing rule governing motions for reconsideration, or a statute or court order.

Fifth, the regulations would be amended to allow the Department to require additional substantiation of confidentiality requests at any time, except when a hearing officer orders otherwise, and would require denial of confidentiality if such additional substantiation were not provided. Here again, these proposed regulations are based on the view that if a person is unable or unwilling to further substantiate a confidentiality request (provided that the Department must adhere to a standard of being "reasonable"), the Department should determine that the person requesting confidentiality has not taken adequate measures to guard the secrecy of the alleged trade secret, and that the alleged trade secret is not valuable to the person requesting confidentiality, as shown by the person's failure to make the effort necessary to substantiate the confidentiality request in compliance with the regulations, and therefore the alleged trade secret is not really a trade secret at all.

Sixth, the regulations would be amended to require that confidentiality requests be accompanied by payment of a fee. The Department intends to ask the Commissioner of Administration to adopt a regulation establishing fees for confidentiality requests. At present, there is no such fee.

The Department intends to amend 310 CMR 3.29 to require that currently pending confidentiality requests be brought into compliance with, and then acted on in accordance with, the new requirements summarized above. The Department would be

required to give specific notice to persons whose confidentiality requests are pending, and would be required to set a "reasonable" compliance deadline on a case-by-case basis. Again, this proposal is based on the view that if a person is unable or unwilling to further substantiate a confidentiality request (provided that the Department must adhere to a standard of being "reasonable"), the Department should determine that the person requesting confidentiality has not taken adequate measures to guard the secrecy of the alleged trade secret, and that the alleged trade secret is not valuable to the person requesting confidentiality, as shown by the person's failure to make the effort necessary to substantiate the confidentiality request in compliance with the regulations, and therefore the alleged trade secret is not really a trade secret at all.

To reflect the enactment of General Laws, Chapter 111F, commonly known as the "Right-to-Know" Law, the Department proposes to amend 310 CMR 3.01 and 3.10. The amendment of 310 CMR 3.10 would exclude from 310 CMR 3.11 through 3.29, and the definition of "trade secret" in 310 CMR 3.05, all records provided to the Department by manufacturers or employers pursuant to the provisions of General Laws, Chapter 111F. Such records would instead be subject to the provisions of General Laws, Chapter 111F, and 310 CMR 33.00, the Department regulations promulgated pursuant to that statute.

Finally, the Department proposes to make certain technical amendments to 310 CMR 3.23. These amendments are intended to clarify the language without making any substantive changes in the requirements, which are themselves intended to be only a summary of existing law, as set forth in Jet Spray Cooler, Inc. v. Crampton, 361 Mass. 835, 282 N.E.2d. 921 (Mass. S. Jud. Ct. 1972)

C. Proposed Amendments Governing Access to Confidential Information

310 CMR 3.21 contains a list of those outside of the Department who are entitled to access to confidential information.

The Department proposes to amend 310 CMR 3.21 to add the following to the list

- The Governor.
- The Secretary of Environmental Affairs.

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- The Department of Environmental Management ["DEM"].
- Any other State official or agency which, in the opinion of DEQE, should be allowed to have access to the information to carry out a public purpose.
- Any contractor or subcontractor of any of the foregoing.
- Any contractor or subcontractor of DEQE.

The Department recognizes that, especially with respect to the latter three categories, appropriate contractual or other safeguards may be necessary. Rather than propose specific language on this subject at this time, the Department invites public comment and suggestions on this subject. After considering whatever public comment and suggestions are received, the Department reserves the right to further amend 310 CMR 3.00, without further public comment or hearings, to include language on this subject.

The Department recognizes that if the various confidentiality statutes addressed specifically to the Department are to be read narrowly and strictly, the Department may not disclose confidential information to <u>anyone</u>, in or out of State government, except the Attorney General's office for enforcement purposes and the U. S. Environmental Protection Agency to comply with Federal law. There are a number of policy reasons why the Department thinks these confidentiality statutes should not be read narrowly and strictly, and legal reasons why the Department thinks such a reading is unnecessary.

As a matter of policy, there are others who the Department thinks should have access to confidential information. These include the Governor and the Secretary of Environmental Affairs because they have direct authority over the Department; DEM to the extent it needs this information in order to properly and efficiently prepare the annual generic environmental impact report, and other material, DEM is required to make pursuant to General Laws, Chapter 21D; and contractors hired by the Department or DEM to provide data processing and other needed services which the Department and DEM need to compile information in ways useful to them.

As a matter of law, the statutes in question specifically prohibit disclosure to the "public". These proposed regulations are based on the view that other State agencies are not the "public". This should be contrasted with provisions of General Laws, Chapter 62C, §§21 <u>et. seq.</u>, statutes which list everyone who may obtain access to State tax returns and forbid disclosure to anyone not on the list.

PROPOSED AMENDMENTS TO THE DEPARTMENT'S REGULATIONS GOVERNING ACCESS TO AND CONFIDENTIALITY OF DEPARTMENT RECORDS AND FILES

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310 CMR: DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING

1. 310 CMR 3.01 is hereby amended by striking out said section and inserting in place thereof the following section:-

3.01: Purpose, Authority, and Applicability

(1) These regulations are promulgated by the Department pursuant to the authority granted by
(a) General Laws, Chapter 21A, Section 2(28).
(b) General Laws, Chapter 21, Section 27(12).
(c) General Laws, Chapter 21C, Section 4.
(d) General Laws, Chapter 21E, Section 3(c).
(e) General Laws, Chapter 111, Sections 142B and 142D.
(f) General Laws, Chapter 111F.

(2) These regulations are intended to assure that public access to and, to the extent authorized or required by law, the confidentiality of records and files obtained or made by the Department are in conformity with
(a) General Laws, Chapter 66, Section 10.
(b) General Laws, Chapter 21, Section 27(7).
(c) General Laws, Chapter 21C, Section 12.
(d) General Laws, Chapter 21E, Section 12.
(e) General Laws, Chapter 111, Sections 142B and 142D.
(f) General Laws, Chapter 111F.
(g) all other applicable statutes and regulations.

2. 310 CMR 3.10 is hereby amended by renumbering subsections (3), (4), and (5) as, respectively, subsections (4), (5), and (6), and by inserting after subsection (2) the following new subsection:-

(3) all records provided to the Department by manufacturers or employers pursuant to the provisions of General Laws, Chapter 111F. The provisions set forth in 310 CMR 3.11 through 3.29, and the definition of "trade secret" set forth in 310 CMR 3.05, shall not apply to such records. Instead, such records shall be subject to General Laws, Chapter 111F, and 310 CMR 33.00.

3. 310 CMR 3.15 is hereby amended by striking out, in the first sentence, the words "Whenever the Department denies a request to deem records confidential", and inserting in place thereof the following:- Except as provided in 310 CMR 3.25(3), whenever the Department denies a request to deem records confidential.

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4. 310 CMR 3.23 is hereby amended by striking out said section and inserting in place thereof the following section:-

3.23: Criteria for Determining a Trade Secret

In determining whether a record is a trade secret, the Department shall apply the following criteria:

(1) The extent to which the alleged trade secret is known by persons other than the person requesting that the record in question be kept confidential.

(2) The extent to which the alleged trade secret is known by employees of the person requesting that the record in question be kept confidential, and by others involved in that person's business.

(3) The extent to which measures to guard the secrecy of the alleged trade secret are taken by the person requesting that the record in question be kept confidential.

(4) The value of the alleged trade secret to the person requesting that the record in question be kept confidential, and to that person's competitors.

(5) The amount of effort in developing the alleged trade secret by the person requesting that the record in question be kept confidential.

(6) The ease or difficulty with which the alleged trade secret could be properly acquired or duplicated by persons other than the person requesting that the record in question be kept confidential.

5. 310 CMR 3.24 is hereby amended by striking out said section and inserting in place thereof the following section:-

3.24: Requests For Protecting The Confidentiality Of Trade Secrets

No record shall be deemed a trade secret unless a person requests the Department in writing to take such action. The request shall be made, substantiated, and paid for in full compliance with the requirements set forth in this section. If the request is not thus made and substantiated, then (1) pursuant to 310 CMR 3.23, the Department shall determine that the person requesting confidentiality has not taken adequate measures to guard the secrecy of the alleged trade

secret, and that the alleged trade secret is not valuable to the person requesting confidentiality, as shown by the person's failure to make the effort necessary to substantiate the confidentiality request in compliance with this section, and (2) the Department shall deny the request forthwith in accordance with 310 CMR 3.25(3). To give full and proper effect to the provisions set forth in 310 CMR 3.12, all of the requirements of this section shall be strictly enforced to assure that confidentiality requests are made, substantiated, and paid for at the outset, and to strictly limit the initiation and duration of proceedings involving confidentiality requests.

(1) Each record containing information which is the subject of a confidentiality request shall be clearly marked "CONFIDENTIAL" at the time it is initially submitted to the Department.

(2) If a person requests confidentiality for parts of a record the remainder of which are not the subject of the confidentiality request, said person shall, when initially requesting that the record be kept confidential, or when the record is initially submitted to the Department, submit two versions of the record, as set forth below, in order to assist the Department in complying with 310 CMR 3.16.

(a) The first version shall be the complete, unedited version, and shall be marked "CONFIDENTIAL" in full compliance with 310 CMR 3.24(1). This version shall be deemed the subject of a confidentiality request pursuant to 310 CMR 3.00.

(b) The second version shall be an edited version, containing only the parts of the record which are not alleged by the person requesting confidentiality to be a trade secret. This version shall not be marked "CONFIDENTIAL". This version shall be a public record immediately upon receipt by the Department.

(3) The person requesting confidentiality shall include with the confidentiality request the information set forth in this subsection, 310 CMR 3.24(3), all of which information shall be submitted no later than 30 days after the request for confidentiality is initially made, and all of which shall be treated as a public record.

(a) The specific time period for which confidential treatment is desired. If confidential treatment is desired forever, the request must say so.

(b) The date of submittal of the record.

(c) The reason the record was submitted to the Department. Without limiting the generality of the foregoing,

1. if the record was submitted in compliance with a statute, regulation or order of the Department, or order of a court, each such statute, regulation, and order shall be cited.
2. if the record was submitted voluntarily, an explanation shall be given why making the record a public record would tend to lessen the availability to the Department of similar records in the future.

(4) To demonstrate that an alleged trade secret meets the criteria set forth in 310 CMR 3.23 for being granted confidentiality, the person requesting confidentiality shall include with the confidentiality request the information set forth in this subsection, 310 CMR 3.24(4), all of which information shall be submitted no later than 30 days after the request for confidentiality is initially made, and all of which shall be treated as a public record.

(a) A reasonably complete description or listing of all persons who, to the knowledge of the person requesting confidentiality, either know, or have or had access to, the alleged trade secret. Without limiting the generality of the foregoing, the description or listing shall include:

1. A description (which need not include actual names or other identifying information) and an estimate of the number, of contractors, consultants, agents, customers, visitors, and other persons.
2. A list of all other Federal, State, and local agencies to which the same record or contents thereof has been submitted, and, for each such agency, a brief explanation of why the record or contents thereof was submitted (e.g. to comply with a statute or regulation, which shall be cited in the explanation).

(b) A reasonably complete description or listing of all employees, current and past, who either know or have or had access to the alleged trade secret. Without limiting the generality of the foregoing, this list shall include proprietors, partners, officers, directors, managers, and other employees, regardless of rank, and regardless of whether they are or were full-time or part-time employees.

(c) A reasonably complete description of every measure taken by the person requesting confidentiality to guard the secrecy of the alleged trade secret. Without limiting the generality of the foregoing, this description shall include:

1. Warnings (including, without limitation, posted signs, distributed materials, and statements made at staff meetings) given to the person's employees that the information is a trade secret and that unauthorized disclosure will result in sanctions, which sanctions, if disclosed to the employees, shall be disclosed to the Department. If it is or has been the person's policy or practice not to give warnings or discuss sanctions, or if the person does not know what the sanctions would be, or both, the person shall specifically say so in the request for confidentiality.
2. Every confidentiality provision (for purposes of this section, other provisions need not be disclosed to the Department) in every contract or other agreement the person has or had with the person's employees, contractors, consultants, agents, customers, visitors, and others. In every case where such a confidentiality provision is not disclosed to the Department pursuant to this provision, the Department shall determine that no such provision exists or existed.
3. A list of all the Federal, State, and local agencies to which the person has made requests to keep confidential the same information, or which have received the same information and are required by law to keep that information confidential whether or not confidentiality is requested. If any such agency is listed pursuant to 310 CMR 3.24(4)(a)2 and is not listed pursuant to this provision, the Department shall determine that said agency was not asked, and is not required, to keep the information confidential.
4. A statement that security measures are being taken to prevent theft of the information by burglars (this statement need not include information the disclosure of which would render such security measures ineffectual).

(d) A reasonably detailed explanation of how the person requesting confidentiality would be harmed if the record in question were to be a public record, and why such harm should be deemed substantial, and either

1. A reasonably detailed statement of the value of the alleged trade secret to the person requesting confidentiality, and to that person's competitors, or
2. A statement explaining, in reasonable detail, why it is not possible for the person requesting confidentiality to calculate the alleged trade secret's value to the person requesting confidentiality, or to that person's competitors, or both, as the case may be.

(e) A reasonably detailed statement of the amount of effort made by the person requesting confidentiality to develop the alleged trade secret. Without limiting the generality of the foregoing, this statement shall be expressed, to the extent known to the person requesting confidentiality, in terms of expenditure of time, man-years, and dollars.

(f) A reasonably detailed statement of the ease or difficulty with which the alleged trade secret can be properly acquired or duplicated by others. Without limiting the generality of the foregoing, this statement shall include:

1. If the alleged trade secret is the formula for, or method of manufacturing, a product, a statement either that the product cannot be properly acquired or obtained or that a person who acquires or obtains the product cannot learn its secret formula or secret method of manufacture by subjecting the product to analysis.

2. If the alleged trade secret is a customer list, a statement that the person requesting confidentiality has never given or sold the customer list to any person (e.g. any mail-order business) for any purpose other than conducting the business of the person requesting confidentiality, and that the customer list cannot be reproduced in any practical way by examining other records (e.g. lists of registered hazardous waste generators, copies of hazardous waste manifests) which are public records in the files of the Department or of any other government agency, Federal, State, or local.

(5) If there are duly established fees for making confidentiality requests, each confidentiality request shall be accompanied by a check or money order, payable to the order of the Commonwealth of Massachusetts, for the full amount of the required fee(s).

6. 310 CMR 3.25 is hereby amended by striking out said section and inserting in place thereof the following section:-

3.25: <u>Procedures For Acting On Requests For Protecting The Confidentiality Of Trade Secrets</u>

The Department shall act on all confidentiality requests subject to the following provisions:

(1) The Department shall first determine whether the request has been made, substantiated, and paid for in compliance with 310 CMR 3.24.

(a) If the Department determines that the request has not been made, substantiated, and paid for in compliance with 310 CMR 3.24, then

1. pursuant to 310 CMR 3.23, the Department shall determine that the person requesting confidentiality has not taken adequate measures to guard the secrecy of the alleged trade secret, and that the alleged trade secret is not valuable to the person requesting confidentiality, as shown by the person's failure to make the effort necessary to substantiate and pay for the confidentiality request in compliance with 310 CMR 3.24, and

2. the Department shall deny the request forthwith in accordance with this section, 310 CMR 3.25(3).

(b) If the Department determines that the request has been made, substantiated, and paid for in compliance with 310 CMR 3.24, then

1. the Department shall review the request and shall determine whether the record would be or was voluntarily submitted within the meaning of 310 CMR 3.22(2) and whether the record, if made public, would divulge a trade secret, and

2. except when a presiding officer orders otherwise in an adjudicatory proceeding conducted pursuant to 310 CMR 3.25(3), the Department may, at any time while the confidentiality request is pending, order the person requesting confidentiality to submit additional arguments, information, or other material to substantiate the confidentiality request; provided, however, that said order shall impose reasonable requirements and give a reasonable amount of time for complying. If the person requesting confidentiality fails to comply with such order in timely fashion, or if the person requests an adjudicatory hearing pursuant to 310 CMR 3.25(3) and thereafter fails to comply in timely fashion with 310 CMR 1.00 or any order of the presiding officer pursuant to 310 CMR 1.00, then in any such case,

a. pursuant to 310 CMR 3.23, the Department shall determine that the person requesting confidentiality has not taken adequate measures to guard the secrecy of the alleged trade secret, and that the alleged trade secret is not valuable to the person requesting confidentiality, as shown by the person's failure to make the effort necessary

to substantiate the confidentiality request in compliance with 310 CMR 3.25(1)(b)2, and
b. the Department shall deny the request forthwith in accordance with this section, 310 CMR 3.25(3).

(2) If the Department has received a request to inspect or copy a record which is the subject of a confidentiality request on which the Department has not made a final decision in accordance with this section, the Department shall notify
(a) the person who made the request to inspect or copy the record that
1. the record in question is the subject of a pending confidentiality request, and therefore not a public record,
2. the request to inspect or copy is initially denied, and
3. a final decision will be made when the Department determines whether the record in question is entitled to confidentiality as a trade secret.
(b) the person who requested that the record be kept confidential of the request to inspect or copy the record.

(3) If the Department makes an initial determination that a record, if made public, would not divulge a trade secret, the Department shall so notify the person who requested that the record be kept confidential, and all persons who requested to inspect or copy the record. Such notice shall be in writing, shall be signed pursuant to 310 CMR 3.13, shall be delivered either by hand or by certified mail, return receipt requested, and shall include a summary of the next three sentences of 310 CMR 3.25(3). Said determination shall automatically become final unless a request for adjudicatory hearing is made by the person who requested confidentiality and received by the office of the Commissioner or the Director, as the case may be, within ten (10) days of the date of receipt of said determination by the person requesting the adjudicatory hearing. If no request for adjudicatory hearing is made and received on or before this deadline, then effective after this deadline, said initial determination shall automatically become final, and the record in question shall be a public record. Said request for adjudicatory hearing shall fully and concisely respond to each of the points of fact and law made in the Department's initial determination, and shall raise every point of fact and law which the person requesting the adjudicatory hearing intends to raise in the adjudicatory proceeding. Said adjudicatory proceeding shall be conducted

in accordance with 310 CMR 1.00. If, at the conclusion of the adjudicatory proceeding, the Department makes a final determination that a record, if made public, would not divulge a trade secret, such determination shall take effect only thirty (30) days after the date thereof so that the person requesting confidentiality may seek judicial review in Superior Court. During this thirty-day period, the record in question shall be treated as confidential and shall not be deemed a public record. This thirty-day period may be extended by the Department only to comply with an applicable statute, court order, or 310 CMR 1.01(10)(p). Any such extension shall be in writing and signed pursuant to 310 CMR 3.13.

(4) If the Department makes a determination that a record, if made public, would divulge a trade secret, the Department shall so notify the person who requested that the record be kept confidential, and all persons who requested to inspect or copy the record. Such notice shall be in writing, shall be signed pursuant to 310 CMR 3.13, shall be delivered either by hand or by certified mail, return receipt requested, and shall include the reasons for the determination and notice that the determination constitutes a final decision of the Department.

(5) If the Department makes a final determination that a smaller part of a record is entitled to confidentiality than the part(s) of the record, or the whole record, that was the subject of the confidentiality request, the person who requested confidentiality shall submit two versions of the record, as follows. The first version shall be the complete, unedited version, and shall be marked "CONFIDENTIAL" in full compliance with 310 CMR 3.24(1). This version shall be deemed confidential pursuant to 310 CMR 3.00. The second version shall be an edited version, containing only the parts of the record which the Department has determined are not a trade secret. This version shall not be marked "CONFIDENTIAL". This version shall be a public record immediately upon receipt by the Department. Both of said versions shall be submitted to the Department within a reasonable deadline, which deadline shall be set by the Department in the determination, in order to assist the Department in complying with 310 CMR 3.16. Said deadline may be extended by the Department but only for good cause shown. Any such extension shall be in writing and signed pursuant to 310 CMR 3.13. If either of said versions is not thus submitted to the Department on or before the deadline set by the Department, then

(a) pursuant to 310 CMR 3.23, the Department shall determine that the person requesting confidentiality has not taken adequate measures to guard the secrecy of the alleged trade secret, and that the alleged trade secret is not valuable to the person requesting confidentiality, as shown by the person's failure to make the effort necessary to substantiate the confidentiality request in compliance with this section, and
(b) the Department shall forthwith set aside the determination that part of the record is entitled to confidentiality, and shall instead deny the confidentiality request forthwith in accordance with 310 CMR 3.25(3).

7. 310 CMR 3.26 is hereby amended by striking out, in the fourth sentence, the words "the Department shall make a new determination", and inserting in place thereof the following:- the Department shall, in accordance with 310 CMR 3.00, make a new determination.

8. 310 CMR 3.29 is hereby amended by inserting after subsection (2) the following subsection:-

(3) A request received by the Department after the effective date of 310 CMR 3.29(3) to deem a record to be a trade secret shall be subject to 310 CMR 3.00, as in effect on the effective date of 310 CMR 3.29(3). A request received by the Department before the effective date of 310 CMR 3.29(3) and still pending as of that date shall be acted on by the Department in accordance with the following provisions:

(a) As soon as practicable after the effective date of 310 CMR 3.29(3), the Department shall notify the person who requested confidentiality that the request must be brought into compliance with 310 CMR 3.24. Such notification shall be in writing, shall be delivered either by hand or by certified mail, return receipt requested. This notification shall include at least the following:

1. A copy of 310 CMR 3.23, 3.24, 3.25, and 3.29(3), as in effect on the effective date of 310 CMR 3.29(3).
2. A deadline for bringing the confidentiality request into compliance with 310 CMR 3.24, which deadline shall be reasonable taking into consideration how many records are included in the request and the complexity of the issues raised by the request. Said deadline may be extended by the Department but only

for good cause shown. Any extension shall be in writing.

3. A statement calling the person's attention to the provisions of 310 CMR 3.29(3)(b).

(b) If the confidentiality request is not brought into compliance with 310 CMR 3.24, as in effect on the effective date of 310 CMR 3.29(3), on or before the deadline set pursuant to 310 CMR 3.29(3)(a)2, then (1) pursuant to 310 CMR 3.23, as in effect on the effective date of 310 CMR 3.29(3), the Department shall determine that the person requesting confidentiality has not taken adequate measures to guard the secrecy of the alleged trade secret, and that the alleged trade secret is not valuable to the person requesting confidentiality, as shown by the person's failure to make the effort necessary to substantiate the confidentiality request in compliance with 310 CMR 3.00, and (2) the Department shall deny the request forthwith in accordance with 310 CMR 3.25(3), as in effect on the effective date of 310 CMR 3.29(3).

(c) If the confidentiality request is brought into compliance with 310 CMR 3.24, as in effect on the effective date of 310 CMR 3.29(3), on or before the deadline set pursuant to 310 CMR 3.29(3)(a)2, said request shall thereafter be acted on in accordance with all applicable provisions of 310 CMR 3.00, as in effect on the effective date of 310 CMR 3.29(3).